322 Phil. 146

THIRD DIVISION

[G.R. No. 110592, January 23, 1996]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. YOLANDA VELASCO Y PAMINTUAN, ACCUSED-APPELLANT.

D E C I S I O N

FRANCISCO, J.:

Sentenced to life imprisonment and a fine of P20,000.00 by the Regional Trial Court of Manila was herein appellant Yolanda Velasco y Pamintuan, after having been found guilty of unlawfully selling "shabu," in violation of Section 15 of Article III in relation to Section 2(e-2), (f), (m), and (o) of Article 1 of "The Dangerous Drugs Act of 1972" (R.A. 6425).[1]

The prosecution's version of appellant's apprehension is as follows:

After close surveillance by the Narcotics Unit of Station 7 of the Western Police District Command confirmed reports that appellant, notoriously tagged as the "Shabu Queen" of Quiricada, Tondo, was indeed illicitly peddling the prohibited drug, a crack team composed of Pat. Ricardo Godoy, Pfc. Lamberto Gan, Pat. Renato Yumang, and Pat. Eduardo Chiapoco launched a buy-bust operation in the afternoon of June 28, 1991 in Quiricada Street. Pat. Godoy was the designated poseur-buyer while the rest stealthily positioned themselves around the area. Donning a basketball outfit as disguise and accompanied by a confidential informant, Pat. Godoy searched for appellant and found her in an alley beside a creek near her house on Quiricada St. apparently preparing to launder some clothes. Pat. Godoy told appellant that he wanted to buy shabu and gave her a fifty peso marked bill. Appellant asked him to wait for a while and went inside her house. When she returned, she reached into her pocket and gave Pat. Godoy less than a gram of shabu wrapped in aluminum foil known in street parlance as a deck. After the exchange and upon Pat. Godoy's pre-arranged signal, his couching teammates rushed to the scene and immediately apprehended the appellant. When the police officers asked appellant to open her pockets, they found five more decks of shabu.

Appellant was then brought to the police precinct for investigation by Pat. Vicente Rodriguez, the officer-in-charge of the Narcotics and Anti-hoodlum Section. The six aluminum foils containing shabu were referred to the Criminal Investigation Laboratory of the Western Police District and tested positive for methamphetamine hydrochloride. A booking sheet and arrest report which recorded the incidents of the operation were prepared by Pat. Rodriguez, while a joint affidavit of apprehension was executed by the members of the buy-bust team.

On her part, appellant claimed that on June 28, 1991, between 2:30 and 3:00 P.M., she was at home laundering clothes in her kitchen when police officers, with their guns drawn, suddenly barged into her house. Two officers held her and frisked her

body for shabu while the other two went upstairs, ransacked her room and even stole some pieces of jewelry belonging to her sister and nieces. She claimed that no shabu was found on her person nor anywhere within the premises of her house. The police officers allegedly brought her outside and asked her to locate a certain Minang. Unable to point to Minang whom appellant claims she does not know, the police officers took her instead. While at the precinct, appellant was again told to locate Minang or think of somebody else to take her place, otherwise appellant would be charged. The police officers also asked for grease money. Appellant insisted that she did not know the person they were looking for and that she was poor and could not give them any grease money. Appellant denied selling shabu to the police officers. and alleged that she had no idea why she was brought to the police precinct and charged with having sold shabu. She further claimed that she had never met the police officers before and that she has no knowledge of any reason which might have impelled them to impute false charges against her. In sum, the defenses of the appellant are denial and frame-up, as she maintained that the six decks of shabu were planted evidence.

The trial court nonetheless found that her defenses could not offset the positive testimony of Pat. Godoy that his unit received information concerning accused-appellant's drug pushing activities from a confidential informant, that they verified the information by surveillance and that the buy-bust operation was conducted strictly as planned and as described in the arrest report and joint affidavit of apprehension. Thus, her conviction.

Now before us on appeal, appellant raises a single error in her "Appellant's Brief," namely: that the trial court erred in admitting the decks of shabu in evidence against her because they were obtained through a warrantless arrest and search.[2] It appears from her "Reply Brief with Motion To Dismiss," however, that appellant likewise assails the jurisdiction of the trial court (RTC) over the case.[3]Thus, two issues are up for resolution.

In amplification of her lone assigned error, appellant contends that as she was not committing any offense but was merely washing clothes in her house when the police officers arrested her unarmed with a warrant, the warrantless arrest cannot be justified under Section 5(a) of Rule 113 of the Rules on Criminal Procedure which provides that:

> "SEC. 5. Arrest without a warrant; when lawful. - A peace officer or a private person may, without a warrant, arrest a person:
>
> (a) When in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.
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> xxx xxx xxx"

And so she posits that there being no valid warrantless arrest, the search incidental thereto which yielded several decks of "shabu" is, perforce, illegal.

With respect to the issue of jurisdiction, appellant argues that in line with the case of "People v. Simon"[4] which provides for the gradation of penalties depending on the amount of drugs involved, her maximum prison term should only be six (6) years inasmuch as the decks of shabu seized from her do not even amount to one

gram. Her case is, she concludes, cognizable by the appropriate Metropolitan Trial Court, considering the passage of R.A. 7691[5] (effective on April 15, 1994) which expanded the jurisdiction of said inferior court to include exclusive jurisdiction over all offenses punishable with imprisonment not exceeding six years, and in effect divested the Regional Trial Court of jurisdiction over her case.

The two issues should be resolved against appellant.

The trial court correctly gave credence and weight to the prosecution evidence that appellant was arrested in *flagrante delicto,* thus completely debunking her claims of denial and frame-up, and validating both the warrantless arrest and search on her person and the use of the confiscated "shabu" as evidence against her. While it is true that the Court, in "People v. Ale,"[6] recognized that:

> "By the very nature of anti-narcotics operation, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great,"[7]

there is no showing that appellant's apprehension was marred by such official abuse. Appellant failed to establish that Pat. Godoy and the other members of the buy-bust team are policemen engaged in mulcting or other unscrupulous activities who were motivated either by the desire to extort money or exact personal vengeance, or by sheer whim and caprice, when they entrapped her. And in the absence of proof of any intent on the part of the police authorities to falsely impute such a serious crime against appellant, as in this case, the presumption of regularity in the performance of official duty, as well as the principle that findings of the trial court on the credibility of witnesses, are entitled to great respect, must prevail over the self-serving and uncorroborated claim of appellant that she had been framed.[8] This becomes all the more so in view of the fact that a claim of a "frame-up," like alibi, is a defense that has been invariably viewed by the Court with disfavor for it can just as easily be concocted but difficult to prove, and is a common and standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act.[9] Clear and convincing evidence are required to prove the defense of "frame-up"[10] which, unfortunately, are inexistent here. In this connection, appellant's attempt to undermine Pat. Godoy's credibility, by harping on the seeming improbability that a drug pusher would readily sell prohibited drugs to a complete stranger,[11] must be rejected. The Court has repeatedly held that drug pushing when done on a small level, as in this case, belongs to those types of crimes that may be committed anytime and at any place.[12] For it is neither uncommon nor improbable that a drug pusher would sell to a total stranger, since what matters is not the existence of familiarity between the procurer and pusher but their agreement and the acts constituting the sale and delivery of the drugs.[13] We wind up our discussion on this issue by reiterating the Court's ruling in "People v. Simon":

"We are aware that the practice of entrapping drug traffickers through the utilization of poseur-buyer is susceptible to mistake, harassment, extortion and abuse. Nonetheless, such causes for judicial apprehension and doubt do not obtain in the case at bar. Appellant's entrapment and arrest were not effected in a haphazard way, for a surveillance was conducted by the team before the buy-bust operation

was effected. No ill motive was or could be attributed to them, aside from the fact that they are presumed to have regularly performed their official duty. Such lack of dubious motive coupled with the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, should prevail over the self-serving and uncorroborated claim of appellant of having been framed x x x."[14]

Moving on to the jurisdictional issue, appellant's position is premised on two relatively recent legal developments. The first is R.A. 7659[15] (effective on December 31, 1993) which amended the penalties imposed by R.A. 6425. Prior to the effectivity of R.A. 7659, the penalty imposed for the violation of many of the provisions of R.A. 6425 was life imprisonment to death regardless of the amount of drugs involved. Section 17 of R.A. 7659 introduced the following amendment:

> "SECTION 17. Section 21, Article IV of Republic Act 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:
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> SEC. 20. *Application of Penalties, Confiscation and Forfeiture of the proceeds or instruments of the Crime* - The penalties for offenses under Sections 3, 4, 7, 8, and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:
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> 1. 40 grams or more of opium;
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> 2. 40 grams or more of morphine;
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> 3. 200 grams or more of shabu or methylamphetamine hydrochloride;
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> 4. 40 grams or more of heroin;
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> 5. 750 grams or more of indian hemp or marijuana;
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> 6. 50 grams or more of marijuana resin or marijuana resin oil;
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> 7. 40 grams or more of cocaine hydrochloride; or
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> 8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.
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> Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prision correccional to reclusion perpetua[16] depending upon the quantity.
>
> xxx xxx xxx." (Italics supplied.)

In the "Simon" case,[17] the Court has had the occasion to rule that the abovementioned beneficent provisions can be applied retroactively to judgments which may have become final and executory prior to December 31, 1993 and even