



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 183700

Present:

SERENO, *C.J.*,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 PEREZ, and
 PERLAS-BERNABE, *JJ.*

- versus -

PABLITO ANDAYA y REANO,
 Accused-Appellant.

Promulgated:

OCT 13 2014

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DECISION

BERSAMIN, J.:

The non-presentation of the confidential informant as a witness does not ordinarily weaken the State’s case against the accused. However, if the arresting lawmen arrested the accused based on the pre-arranged signal from the confidential informant who acted as the poseur buyer, his non-presentation must be credibly explained and the transaction established by other ways in order to satisfy the quantum of proof beyond reasonable doubt because the arresting lawmen did not themselves participate in the buy-bust transaction with the accused.

Antecedents

On February 7, 2003, an information for violation of Section 5 of Republic Act No. 9165¹ (RA 9165) was filed charging Pablito Andaya y Reano (Andaya). The accusatory portion of the information reads:

¹ Comprehensive Dangerous Drugs Act of 2002.

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That on or about December 16, 2002 at around 9:50 o'clock in the evening at Brgy. San Jose Sico, Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there, willfully, unlawfully and feloniously, sell, dispense or deliver, more or less 0.09 gram(s) of Methamphetamine Hydrochloride (shabu), a dangerous drug, which is a clear violation of the above-cited law.

CONTRARY TO LAW.²

Upon arraignment,³ Andaya pleaded *not guilty* to the charge. Thereafter, trial on the merits ensued.

The CA summed up the versions of the parties, as follows:⁴

Five (5) witnesses were presented by the prosecution, namely: SPO4 Delfin Alea, SPO3 Nelio Lopez, SPO2 Danilo Mercado, SPO4 Protasio Marasigan and Jupri Delantar.

SPO2 Delfin Alea testified that at about 8:00 o'clock in the evening of December 16, 2002, their asset who was conducting surveillance of Pablito Andaya in Barangay San Jose Sico, Batangas City, arrived at their station. Said asset reported that he had arranged to buy shabu from Pablito. A team composed of SPO1 Aguila, SPO1 Cabungcal, Eric de Chavez, PO1 Lindberg Yap, Edwalberto Villar and asset Bagsit was constituted to conduct a buy-bust. Two (2) pieces of P100.00 bills both duly marked "X" were recorded in the police blotter. Alea gave the marked bills to the asset. Upon reaching the designated place, the team members alighted from their vehicles and occupied different positions where they could see and observe the asset. The asset knocked on the door of Pablito's house. Pablito came out. Pablito and the asset talked briefly. The asset gave Pablito the marked money. The asset received something from appellant. The pre-arranged signal signifying consummation of the transaction was given. The team members approached Pablito and the asset, introduced themselves as police officers and arrested accused. He was brought to the police station. The arrival of the team was recorded in the police blotter. The merchandise handed by accused to the asset was sent to the Regional Crime Laboratory in Camp Vicente Lim, Canlubang, Laguna. The specimen was positive for methamphetamine Hydrochloride (shabu), a dangerous drug.

SPO2 Lopez received the person of the accused, the marked money and the item accused handed to the asset. Lopez prepared the request for laboratory examination. He also prepared the documents required for filing of the case with the Public Prosecutor.

SPO2 Danilo Mercado recorded the marked bills in the police blotter before the buy-bust. Upon the team's return, the marked money

² Records, p. 1.

³ Id. at 17-18.

⁴ *Rollo*, pp. 4-5.

and the merchandise from accused were turned over to SPO2 Mercado. He prepared a complaint sheet. Thereafter, he turned over accused and the evidence to the Police Investigator.

SPO4 Protacio Marasigan received a written request for laboratory examination of the subject merchandise. He brought the request to the crime laboratory in Laguna.

Jupri Delantar, a Forensic Chemical Officer in Camp Vicente Lim, Laguna, conducted the examination. The merchandise tested positive for shabu.

Accused-appellant denied the charge. He stated that at about 9:15 in the evening of December 16, 2002 he was at home watching TV with his family when police officers arrived. When he opened the door, a police officer poked his gun at him. Somebody else held a long firearm. Pablito was handcuffed and brought outside. He refused to negotiate and asked for a warrant. The policemen searched the house, turned over the beddings and uncovered their furniture. No gun nor shabu was found. Pablito was brought to the police station and detained. After three (3) days he was released. He received a subpoena from the Public Prosecutor afterwards.

His wife Crisanta, corroborated appellants' testimony. She added having told her husband about the loss of their cellphone and the money in his wallet. She was asked to produce ₱5,000.00 which she was unable to do. She was able to raise only ₱2,000.00.

Judgment of the RTC

On February 21, 2006, the Regional Trial Court, Branch 4, in Batangas City (RTC) rendered its judgment convicting Andaya as charged, and meted him the penalty of life imprisonment,⁵ viz:

In the case at bar, the buy-bust operation conducted on the night of December 16, 2002 is supported by the police blotter wherein not only was the departure and arrival of the operatives have been duly recorded but also the two (2) pieces of marked one hundred peso bills. The arrest of the accused was made after the police asset had given the pre-arranged signal outside his house. The marked money was recovered from the very hand of the accused while the deck of crystalline substances given to the asset upon the latter's handing over to the accused the marked money has been turned over to the police by the asset. The crystalline substance when examined at the police crime laboratory was found to contain methamphetamine hydrochloride a dangerous and prohibited drug and weighed 0.09 gram.

These foregoing facts have been clearly testified to by the Prosecution witnesses who are members of the Philippine Integrated National Police Force stationed at Batangas City. No ill-motive has been imputed to any of these police officers prior to and at the time the herein accused was arrested on the night of December 16, 2002.

⁵ CA rollo, pp. 36-42.

The accused and his wife as a defense denied the sale of shabu that fateful night. There were allegations in their testimonies that the police demanded money from them. The wife of the accused even testified that she gave ₱1,500.00 to the police officer who then eventually released said accused. And early on, she even claimed money and a cellphone were missing after the accused was arrested in their house.

The testimonies of the accused and his wife are bereft of any corroborating evidence emanating from a disinterested source. It is no less than self-serving devoid of any credence considering the following circumstances:

1. Scrutinizing the entirety of the testimony of the accused and his wife Crisanta Andaya, there are material variances gleaned therefrom. The accused himself never testified that he was pushed to a chair and yet witness Crisanta Andaya said she saw her husband pushed to a chair. Also, the accused said there were two guns poked at him when he opened the door but his wife said only one was holding a gun while another had a long firearm on his shoulder.
2. The testimony of the accused was that only ₱500.00 was taken by the police before his release. But the wife said ₱1,500.00 was given to the police before the accused was released.
3. The accused and his wife never made any complaint to the proper authorities as regards the alleged loss of money and cellphone when the accused was arrested on December 16, 2002. Neither was there any complaint filed by them for the alleged ₱500.00 or ₱1,500.00 demanded from and given by them to the police.
4. The accused was a resident of Barangay San Jose Sico, Batangas City since the 1980's why was it that it was at Rosario, Batangas where the accused was arrested. The Defense gave no evidence to contest the presumption of guilt based on flight.
5. It is significant to note also that the accused never bothered to ask who was knocking at his door past 9:00 o'clock in the evening. While his family was already lying in bed to sleep he was still watching T.V. These actuations of the accused tend to support the fact that the police asset had made a deal with the accused for the sale of shabu and was expecting the asset to come that night.

In the light of all foregoing considerations, the Court is left with no alternative than to find the herein accused criminally liable for the offense charged in the information.

Wherefore, accused Pablito Andaya y Reano is found **GUILTY** beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165. He is therefore sentenced to undergo life imprisonment and to pay the costs of this action. The 0.09 gram of methamphetamine

hydrochloride subject of this case is confiscated and directed to be proceeded against pursuant to law.

The accused may be credited with his preventive imprisonment if he is entitled to any.

SO ORDERED.⁶

Decision of the CA

In his appeal, Andaya contended:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S SEARCH AND ARREST AS ILLEGAL.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.⁷

On February 11, 2008, the CA promulgated its assailed decision affirming the conviction,⁸ viz:

WHEREFORE, in view of the foregoing, the appeal is DISMISSED. The decision of Branch IV, RTC, Fourth Judicial Region, Batangas City, in Criminal Case No. 12771 is AFFIRMED in toto.

SO ORDERED.⁹

Issues

Hence, Andaya appeals, insisting that the search of his house and his person and his arrest by the police officers violated his constitutional right against unreasonable searches and seizures; and that the Prosecution's non-presentation of the confidential informant was adverse to the Prosecution, indicating that his guilt was not proved beyond reasonable doubt.

⁶ Id. at 40-42.

⁷ Id. at 23.

⁸ *Rollo*, pp. 2-10; penned by Associate Justice Arcangelita M. Romilla-Lontok, with the concurrence of Associate Justice Mariano C. Del Castillo (now a Member of the Court) and Associate Justice Romeo F. Barza.

⁹ *CA rollo*, p. 93.

Ruling

The appeal is meritorious.

To secure the conviction of the accused who is charged with the illegal sale of dangerous drugs as defined and punished by Section 5, Article II of Republic Act No. 9165 (*Comprehensive Drugs Act of 2002*), the State must establish the concurrence of the following elements, namely: (a) that the transaction or sale took place between the accused and the poseur buyer; and (b) that the dangerous drugs subject of the transaction or sale is presented in court as evidence of the *corpus delicti*.¹⁰

We reiterate that a buy-bust operation is a valid and legitimate form of entrapment of the drug pusher.¹¹ In such operation, the poseur buyer transacts with the suspect by purchasing a quantity of the dangerous drug and paying the price agreed upon, and in turn the drug pusher turns over or delivers the dangerous drug subject of their agreement in exchange for the price or other consideration. Once the transaction is consummated, the drug pusher is arrested, and can be held to account under the criminal law. The justification that underlies the legitimacy of the buy-bust operation is that the suspect is arrested *in flagranti delicto*, that is, the suspect has just committed, or is in the act of committing, or is attempting to commit the offense in the presence of the arresting police officer or private person.¹² The arresting police officer or private person is favored in such instance with the presumption of regularity in the performance of official duty.

Proof of the transaction must be credible and complete. In every criminal prosecution, it is the State, and no other, that bears the burden of proving the illegal sale of the dangerous drug beyond reasonable doubt.¹³ This responsibility imposed on the State accords with the presumption of innocence in favor of the accused, who has no duty to prove his innocence until and unless the presumption of innocence in his favor has been overcome by sufficient and competent evidence.¹⁴

Here, the confidential informant was not a police officer. He was designated to be the poseur buyer himself. It is notable that the members of

¹⁰ *People v. Gonzales*, G.R. No. 182417, April 3, 2013, 695 SCRA 123, 130; *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 303.

¹¹ *People v. Bartolome*, G.R. No. 191726, February 6, 2013, 690 SCRA 159, 173.

¹² Section 5(a), Rule 113 of the *Rules of Court* provides:

Section 5. *Arrest without 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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¹³ *People v. Capuno*, G.R. No. 185715, January 19, 2011, 640 SCRA 233, 242-243.

¹⁴ *People v. Sanchez*, G.R. No. 175832, October 15, 2008, 569 SCRA 194, 207.

the buy-bust team arrested Andaya on the basis of the pre-arranged signal from the poseur buyer. The pre-arranged signal signified to the members of the buy-bust team that the transaction had been consummated between the poseur buyer and Andaya. However, the State did not present the confidential informant/ poseur buyer during the trial to describe how exactly the transaction between him and Andaya had taken place. There would have been no issue against that, except that none of the members of the buy-bust team had directly witnessed the transaction, if any, between Andaya and the poseur buyer due to their being positioned at a distance from the poseur buyer and Andaya at the moment of the supposed transaction.

The CA did not find anything wrong or odd in the non-presentation of the poseur buyer as a witness against the accused. In fact, it justified the non-presentation as follows:

Appellant also questioned the failure of the prosecution to present the informer. The court is aware of the considerations why confidential informants are usually not presented by the prosecution. There is the need to hide their identity and preserve their invaluable service to the police. (*People v. Khor*, 307 SCRA 295 [1999], citing *People v. Gireng*, 241 SCRA 11 [1995].) Foremost is the desire to protect them from being objects or targets of revenge by the criminals they implicate once they become known. (*People vs. Ong*, G.R. No. 137348, June 21, 2004.)

In *People vs Lopez* (214 SCRA 323), it was held that there was no need for the prosecution to present the confidential informer as the poseur-buyer himself positively identified the accused as the one who sold to him one deck of methamphetamine hydrochloride or “shabu.” The trial court then properly relied on the testimonies of the police officers despite the decision of the prosecution not to present the informer.¹⁵

The foregoing justification by the CA was off-tangent and does not help the State’s cause any. It is obvious that the rulings cited to support the need to conceal the confidential informants’ identities related to the confidential informants who gave information against suspected drug dealers. The presentation of the confidential informants as witnesses for the Prosecution in those instances could be excused because there were poseur buyers who directly incriminated the accused. In this case, however, it was different, because the poseur buyer and the confidential informant were one and the same. Without the poseur buyer’s testimony, the State did not credibly incriminate Andaya.

Indeed, Section 5 of Republic Act No. 9165 punishes “any person, who, unless authorized by law, shall **sell**, trade, administer, dispense, **deliver**, give away to another, distribute, dispatch in transit or transport **any dangerous drug**, including any and all species of opium poppy regardless of

¹⁵ *Rollo*, p. 7.

the quantity and purity involved, or shall act as a broker in any of such transactions.” Under the law, *selling* was any act “of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration;”¹⁶ while *delivering* was any act “of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.”¹⁷ Given the legal characterizations of the acts constituting the offense charged, the members of the buy-bust team could not incriminate Andaya by simply declaring that they had seen from their positions the poseur buyer handing something to Andaya who, in turn, gave something to the poseur buyer. If the transaction was a sale, it was unwarranted to infer from such testimonies of the members of the buy-bust team that what the poseur buyer handed over were the marked ₱100.00 bills and that what Andaya gave to the poseur buyer was the *shabu* purchased.

Another mark of suspicion attending the evidence of guilt related to the reliance by the members of the buy-bust team on the pre-arranged signal from the poseur buyer. To start with, the record does not show what the pre-arranged signal consisted of. It is fundamental enough to expect the State to be clear and definite about its evidence of guilt, particularly here where the conviction of Andaya would require him to spend the rest of his natural life behind bars. Nothing less should be done here. Secondly, the reliance on the supposed signal to establish the consummation of the transaction between the poseur buyer and Andaya was unwarranted because the unmitigatedly hearsay character of the signal rendered it entirely bereft of trustworthiness. The arresting members of the buy-bust team *interpreted* the signal from the anonymous poseur buyer as the sign of the consummation of the transaction. Their interpretation, being necessarily subjective without the testimony of the poseur buyer, unfairly threatened the liberty of Andaya. We should not allow that threat to perpetuate itself. And, lastly, the reliance on the signal would deprive Andaya the right to confront and test the credibility of the poseur buyer who supposedly gave it.

We should look at the situation of Andaya with utmost caution because of what our judicial experience through the years has told us about unscrupulous lawmen resorting to stratagems of false incrimination in order to arrest individuals they target for ulterior reasons. In this case, the arrest did not emanate from probable cause, for the formless signal from the anonymous poseur buyer did not establish beyond reasonable doubt the elements of illegal sale of dangerous drugs under Section 5 of Republic Act No. 9165.

In affirming the RTC’s conviction of the accused, the CA observed that the defense of frame-up put up by the accused was discredited by the

¹⁶ Section 3 (*Definitions*), ii, of Republic Act No. 9165.

¹⁷ Section 3 (*Definitions*), k, of Republic Act No. 9165.

absence of proof of “any intent on the part of the police authorities to falsely impute such crime against the accused, the presumption of regularity in the performance of official duty stands.”¹⁸ Such outright rejection by the lower courts of Andaya’s defense of frame-up is not outrightly binding. For sure, the frame-up defense has been commonly used in prosecutions based on buy-bust operations that have led to the arrest of the suspects.¹⁹ Its use might be seen as excessive, but the failure of the accused to impute any ill motives to falsely incriminate them should not deter us from scrutinizing the circumstances of the cases brought to us for review. We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. The State must fully establish that for us. If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.

Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.²⁰

The criminal accusation against a person must be substantiated by proof beyond reasonable doubt. The Court should steadfastly safeguard his right to be presumed innocent. Although his innocence could be doubted, for his reputation in his community might not be lily-white or lustrous, he should not fear a conviction for any crime, least of all one as grave as drug pushing, unless the evidence against him was clear, competent and beyond reasonable doubt. Otherwise, the presumption of innocence in his favor would be rendered empty.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on February 11, 2008; **ACQUITS** accused Pablito Andaya y Reano for failure to prove his guilt beyond reasonable doubt; and **ORDERS** his immediate release from confinement at the National Penitentiary in Muntinlupa City.

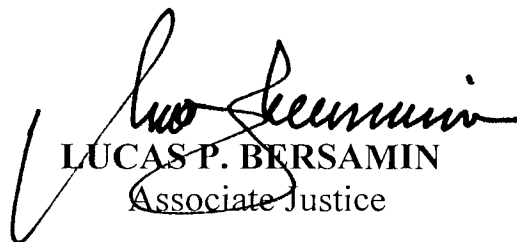
¹⁸ *Rollo*, p. 9.

¹⁹ *Cacao v. People*, G.R. No. 180870, January 22, 2010, 610 SCRA 636, 650.


²⁰ *People v. Capuno*, G.R. No. 185175, January 19, 2011, 640 SCRA 233, 252.

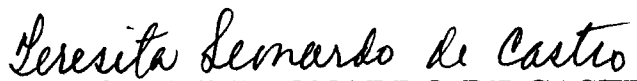
The Court **DIRECTS** that the Director of the Bureau of Corrections to implement the immediate release of Pablito Andaya y Reano, unless he is confined for any other lawful cause; and to report his compliance within ten days from receipt.

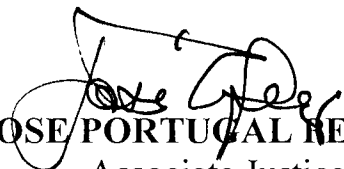
SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice