



Republic of the Philippines
Supreme Court
 Manila

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
 Petitioner,

G.R. No. 184658

Present:

- versus -

JUDGE RAFAEL R. LAGOS, IN HIS
 CAPACITY AS PRESIDING JUDGE,
 REGIONAL TRIAL COURT,
 QUEZON CITY, BRANCH 79,
 JONATHAN DY y RUBIC, CASTEL
 VINCI ESTACIO y TOLENTINO,
 AND CARLO CASTRO y CANDO,
 Respondents.

SERENO, *CJ*, Chairperson,
 LEONARDO-DE CASTRO,
 BERSAMIN,
 VILLARAMA, JR., and
 REYES, *JJ*.

Promulgated:

MAR 06 2013

x ----- x

DECISION

SERENO, *CJ*:

Before this Court is a special civil action for certiorari under Rule 65 seeking to reverse the following Orders in Criminal Case No. Q-07-146628 issued by public respondent Judge Rafael R. Lagos (Judge Lagos), presiding judge of the Regional Trial Court (RTC) of Quezon City, Branch 79:

1. The Order issued on 23 April 2008, *granting* respondents' Petition for Bail and Motion for Leave to File Demurrer to Evidence;¹
2. The Order issued on 24 June 2008 *granting* the demurrer to evidence filed by respondents and *acquitting* them of the crime of illegal sale of drugs punishable under Section 5, Article II, Republic Act 9165;²
3. The Order issued on 24 July 2008, which: a) *denied* petitioner's Motion for Inhibition, b) *denied* petitioner's Motion for

¹ *Rollo*, pp. 30-40.

² *Id.* at 41-46.

Reconsideration of the 24 July 2008 Order; and c) *granted* respondents' Motion to withdraw their cash bonds.³

On 30 March 2007, at 11:00 a.m., a confidential informant (CI) appeared before the Anti-Illegal Drugs Special Operations Task Force (AIDSOTF) of the Philippine National Police (PNP) in Camp Crame, Quezon City. The CI relayed to Police Senior Inspector Fidel Fortaleza, Jr. (P S/Insp. Fortaleza) that an individual using the alias "Brian" was engaged in the illegal sale of the prohibited drug "ecstasy" in BF Homes, Parañaque City.⁴ The CI further reported that "Brian," who was later identified as herein private respondent Castel Vinci Estacio y Tolentino (Estacio), promised a commission from any transaction the former would help arrange. P S/Insp. Fortaleza, as team leader of the AIDSOTF, assembled and briefed the team that would conduct the buy-bust operation. Police Officer (PO) 2 Marlo V. Frando (PO2 Frando) was assigned to act as the poseur-buyer and PO2 Ruel P. Cubian (PO2 Cubian) as back-up, while the rest of the team members were to serve as perimeter security. P S/Insp. Fortaleza and PO2 Leonard So prepared and dusted two ₱500 bills for use as buy-bust money. The CI then called respondent Estacio, informing him that a prospective buyer wished to purchase thirty (30) tablets of ecstasy with a total value of ₱50,000.⁵ That afternoon, respondent Estacio instructed them to proceed to Tandang Sora Avenue, Quezon City, where the transaction was to take place.⁶

At 11:00 p.m. of the same day, Estacio alighted from a Toyota Vios car at the Jollibee branch located at the corner of Commonwealth Avenue and Tandang Sora. PO2 Frando, accompanied by the CI, approached Estacio. After PO2 Frando was introduced to Estacio as the prospective buyer, the latter demanded to see the payment. However, PO2 Frando asked him to first show the ecstasy pills.⁷ Estacio then opened the doors of the vehicle and introduced his two companions, Carlo and Jonathan (later identified as herein respondents Jonathan Dy and Carlo Castro), to PO2 Frando and the CI. Respondent Castro handed PO2 Frando one sealed plastic sachet containing several pink pills. The latter gave the "boodle" money to respondent Dy and immediately removed his baseball cap. The removal of the cap was the prearranged signal to the rest of the buy-bust team that the transaction was complete.⁸

PO2 Frando introduced himself as a police officer and informed respondents of their constitutional rights.⁹ PO2 Cubian frisked respondent

³ Id. at 47-48.

⁴ Id. at 5.

⁵ Id. at 159, citing the Transcript of Stenographic Notes (TSN) dated 20 June 2007, p. 20.

⁶ Id.

⁷ Id. at 159-160, citing the TSN dated 20 June 2007, p. 26.

⁸ Id. at 160, citing the TSN dated 20 June 2007, p. 26-27.

⁹ Id. at 160, citing the TSN dated 20 June 2007, p. 28.

Dy and was able to recover the buy-bust money.¹⁰ Respondents were then escorted to the AIDSOTF office in Camp Crame, where they identified themselves as Castel Vinci Estacio y Tolentino, Carlo Castro y Cando, and Jonathan Dy y Rubic. As officer in charge of the inventory of the evidence seized, PO2 Cuban turned over the plastic sachet to PO3 Jose Rey Serrona, who was in charge of the investigation.¹¹ On 31 March 2007, forensic chemist and Police Senior Inspector Yelah C. Manaog (P S/Insp. Manaog) conducted a laboratory examination of the contents of the sachet, which was completed at 10:50 a.m. that same day.¹² The 30 pink pills were found positive for methylenedioxymethamphetamine (MDMA) hydrochloride, commonly known as ecstasy, a dangerous drug.¹³

An Information dated 3 April 2007 was filed against respondents for the sale of dangerous drugs, in violation of Section 5, Article II of Republic Act No. (R.A.) 9165. The case was raffled to the sala of Judge Fernando Sagum, Jr. of the Quezon City RTC. Upon arraignment, respondents pleaded not guilty to the charges. Trial ensued, and the prosecution presented its evidence, including the testimonies of four witnesses: PO2 Marlo V. Frando, PO2 Ruel P. Cuban, Police Senior Inspector Yelah C. Manaog, and PO3 Jose Rey Serrona. After the prosecution submitted its Formal Offer of Evidence on 17 November 2007, respondents filed a Motion for leave of court to file their demurrer, as well as a Motion to resolve their Petition for Bail. On 2 January 2008, Judge Sagum issued a Resolution denying both the Petition for Bail and the Motion for leave of court to file a demurrer. Respondent Estacio then sought the inhibition of Judge Sagum, a move subsequently adopted by respondents Dy and Castro. On 15 January 2008, Presiding Judge Sagum inhibited himself from the case. On 31 January 2008, the case was re-raffled to public respondent Judge Lagos.

Judge Lagos issued the first assailed Order on 23 April 2008 granting respondents' Petition for Bail and allowing them to file their demurrer. On 24 June 2008, he issued the second assailed Order, **acquitting** all the accused. On Motion for Reconsideration filed by the People, he issued the third assailed Order denying the above motion and granting the Motion to Withdraw Cash Bonds filed by the accused.

Before this Court, the prosecution argues that Judge Lagos committed grave abuse of discretion tantamount to lack or excess of jurisdiction in granting the demurrer despite clear proof of the elements of the illegal sale, the existence of the *corpus delicti*, and the arrest *in flagrante delicto*.¹⁴ Private respondents counter that the Petition is dismissible on the ground of double jeopardy and is violative of the principle of hierarchy of courts.

¹⁰ Id. at 160, citing the TSN dated 12 September 2007 (testimony of PO2 Ruel P. Cuban).

¹¹ Id. at 161, citing the TSN dated 12 September 2007, p. 44.

¹² Id. at 161, citing the TSN dated 8 August 2007, p. 10 (testimony of P S/Insp. Yelah C. Manaog).

¹³ Id. at 161, citing the TSN dated 8 August 2007, p. 10.

¹⁴ Id. at 169 (Memorandum of Petitioner, p. 12).

We grant the petition.

Respondent judge committed grave abuse of discretion in granting the demurrer.

It has long been settled that the grant of a demurrer is tantamount to an acquittal. An acquitted defendant is entitled to the right of repose as a direct consequence of the finality of his acquittal.¹⁵ This rule, however, is not without exception. The rule on double jeopardy is subject to the exercise of judicial review by way of the extraordinary writ of *certiorari* under Rule 65 of the Rules of Court. The Supreme Court is endowed with the power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.¹⁶ Here, the party asking for the review must show the presence of a whimsical or capricious exercise of judgment equivalent to lack of jurisdiction; a patent and gross abuse of discretion amounting to an evasion of a positive duty or to a virtual refusal to perform a duty imposed by law or to act in contemplation of law; an exercise of power in an arbitrary and despotic manner by reason of passion and hostility; or a blatant abuse of authority to a point so grave and so severe as to deprive the court of its very power to dispense justice.¹⁷ In such an event, the accused cannot be considered to be at risk of double jeopardy.¹⁸

The trial court declared that the testimonies of PO2 Frando, PO2 Cubian, P S/Insp. Manaog, and AIDSOTF Chief Leonardo R. Suan were insufficient to prove the culmination of the illegal sale, or to show their personal knowledge of the offer to sell and the acceptance thereof. In granting the demurrer filed by the accused, respondent judge surmised that it was the CI who had initiated the negotiation of the sale and should have thus been presented at trial.

Accused were caught in flagrante delicto; AIDSOTF police officers witnessed the actual sale.

The trial court's assessment that the witnesses had no personal knowledge of the illegal sale starkly contrasts with the facts borne out by the

¹⁵ *People v. Court of Appeals and Galicia*, 545 Phil. 278, 292-293 (2007), citing *People v. Velasco*, 394 Phil. 517, 556 (2000).

¹⁶ *De Vera v. De Vera*, G.R. No. 172832, 7 April 2009, 584 SCRA 506.

¹⁷ *People v. De Grano*, G.R. No. 167710, 5 June 2009, 588 SCRA 550, 567-568.

¹⁸ *Id.* at 567.

records. PO2 Frando was present during the negotiation and the actual buy-bust operation. PO2 Frando himself acted as the poseur-buyer and testified in open court. PO2 Cubian frisked the accused and recovered the buy-bust money; he also testified in court. P S/Insp. Manaog testified as to the *corpus delicti* of the crime; and the 30 pills of ecstasy were duly marked, identified, and presented in court. The validity of buy-bust transactions as an effective way of apprehending drug dealers in the act of committing an offense is well-settled.¹⁹

The only elements necessary to consummate the crime of illegal sale of drugs is proof that the illicit transaction took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug as evidence.²⁰ In buy-bust operations, *the delivery of the contraband to the poseur-buyer and the seller's receipt of the marked money successfully consummate the buy-bust transaction between the entrapping officers and the accused.* Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve faith and credit.²¹ The Court has held that when police officers have no motive to testify falsely against the accused, courts are inclined to uphold the presumption of regularity accorded to them in the performance of their official duties.²² In the present case, there is no contention that the members of AIDSOTF who conducted the buy-bust operation were motivated by ill will or malice. Neither was there evidence adduced to show that they neglected to perform their duties properly. Hence, their testimonies as to the conduct of the buy-bust operation deserves full faith and credence.

Respondent judge harps on the fact that it was the CI who had personal knowledge of the identity of the seller, the initial offer to purchase the ecstasy pills, and the subsequent acceptance of the offer. It is clear from the testimonies of PO2 Frando and the other arresting officers that they conducted the buy-bust operation based on the information from the CI. However, the arrest was made, not on the basis of that information, but of the actual buy-bust operation, in which respondents were caught *in flagrante delicto* engaged in the illegal sale of dangerous drugs. Due to the investigative work of the AIDSOTF members, the illegal sale was consummated in their presence, and the elements of the sale – the identity of the sellers, the delivery of the drugs, and the payment therefor – were confirmed. That the CI initially provided this information or “tip” does not negate the subsequent consummation of the illegal sale.

¹⁹ *People v. Chua*, 416 Phil. 33, 56 (2001); *People v. Dumangay*, G.R. No. 173483, 23 September 2008, 566 SCRA 290, 302.

²⁰ *People v. Unisa*, G.R. No. 185721, 28 September 2011, 658 SCRA 305.

²¹ *People v. Dumangay*, supra note 19.

²² *People v. Buenaventura*, G.R. No. 184807, 23 November 23, 2011, 661 SCRA 216, 225-226.

In the Court's Resolution on *People v. Utoh*, the accused was caught *in flagrante delicto* selling ₱36,000 worth of shabu in a buy-bust operation conducted by the Philippine Drug Enforcement Agency (PDEA). The accused argued that mere reliable information from the CI was an insufficient ground for his warrantless arrest. The Court stated:

Utoh was arrested not, as he asserts, on the basis of "reliable information" received by the arresting officers from a confidential informant. His arrest came as a result of a valid buy-bust operation, a form of entrapment in which the violator is caught *in flagrante delicto*. The police officers conducting a buy-bust operation are not only authorized but also duty-bound to apprehend the violators and to search them for anything that may have been part of or used in the commission of the crime.

The testimonies of arresting officers IO1 Apiit and IO1 Mosing were straightforward, positive, and categorical. From the time they were tipped off by the confidential informant at around 9:00 a.m. of November 22, 2008 or up to the time until the informant confirmed Utoh's impending arrival at a very late hour that night, and the latter's eventual arrest, the intelligence officers credibly accounted for the briefings held, the preparations, and actions taken by them.²³

It is well-settled that the testimony of the CI in the sale of illegal drugs is not indispensable.

Given the foregoing, respondent Judge Lagos erred in requiring the testimony of the CI. Respondent judge based his ruling on a 2004 case, *People v. Ong*, the facts of which purportedly "mirror" those of the present case. However, there is no basis for this conclusion, as *Ong* involved a conviction based on the lone testimony of one apprehending officer, Senior Police Officer (SPO1) Gonzales. The Court found that SPO1 Gonzales was merely the deliveryman, while the CI was the one who acted as the poseur-buyer. In this case, one of the witnesses, PO2 Frando, was a buy-bust team member who also acted as the poseur-buyer. He participated in the actual sale transaction. His testimony was a firsthand account of what transpired during the buy-bust and thus stemmed from his personal knowledge of the arrest *in flagrante delicto*.

Requiring the CI to testify is an added imposition that runs contrary to jurisprudential doctrine, since the Court has long established that the presentation of an informant is not a requisite for the prosecution of drug cases. The testimony of the CI is not indispensable, since it would be merely corroborative of and cumulative with that of the poseur-buyer who was

²³ *People v. Utoh*, G.R. No. 196227, 14 November 2011 (Unsigned Resolution).

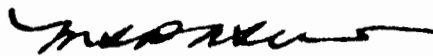
presented in court, and who testified on the facts and circumstances of the sale and delivery of the prohibited drug.²⁴

Informants are usually not presented in court because of the need to hide their identities and preserve their invaluable services to the police. Except when the accused vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the officers had motives to falsely testify against the accused, or that it was the informant who acted as the poseur-buyer, the informant's testimony may be dispensed with, as it will merely be corroborative of the apprehending officers' eyewitness accounts.²⁵ In *People v. Lopez*, the Court ruled that the "informant's testimony, then, would have been merely corroborative and cumulative because the fact of sale of the prohibited drug was already established by the direct testimony of SPO4 Jamisolamin who actively took part in the transaction. If the prosecution has several eyewitnesses, as in the instant case, it need not present all of them but only as many as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt."²⁶

Similarly, in the present case, the fact of the illegal sale has already been established by testimonies of the members of the buy-bust team. Judge Lagos need not have characterized the CI's testimony as indispensable to the prosecution's case. We find and so hold that the grant of the demurrer for this reason alone was not supported by prevailing jurisprudence and constituted grave abuse of discretion. The prosecution's evidence was, prima facie, sufficient to prove the criminal charges filed against respondents, subject to the defenses they may present in the course of a full-blown trial.

WHEREFORE, premises considered, the assailed Orders of the Regional Trial Court dated 23 April 2008, 24 June 2008, and 24 July 2008 are **ANNULLED** and **SET ASIDE**. The RTC is **ORDERED** to reinstate Criminal Case No. Q-07-146628 to the court's docket and proceed with trial.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice

²⁴ *People v. Andres*, G.R. No. 193184, 7 February 2011, 641 SCRA 602, 610-611.

²⁵ *Id.* at 611.

²⁶ G.R. No. 172369, 7 March 2007, 517 SCRA 749, 759-760.

WE CONCUR:

TERESITA LEONARDO DE CASTRO
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Martin S. Villarama, Jr.
MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
BIENVENIDO L. REYES
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
MARIA LOURDES P. A. SERENO
Chief Justice