

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARDO DELA CRUZ Y ARCILLA A.K.A. “TOTO BAHO,” ACCUSED-APPELLANT.

CR-H.C. No. 03807, July 15, 2010

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Court of Appeals

Before Us is an appeal from the Decision[1] dated August 28, 2008 of the Regional Trial Court, Branch 77, San Mateo, Rizal in Criminal Case No. 8328-05 finding accused-appellant Leonardo dela Cruz y Arcilla a.k.a. "Toto Baho" guilty of the crime of illegal sale of zero point zero two (0.02) gram of methylamphetamine hydrochloride or shabu in violation of par. 1 of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002" and imposing upon him the penalty of life imprisonment and a fine of Five Hundred Thousand (P500,000.00) Pesos.

THE FACTS

In an Information[2] dated November 3, 2005, appellant was charged with the crime of violation of Section 5, Article II of R.A. No. 9165 committed as follows:

That, on the 2nd day of November 2005 in the Municipality of Rodriguez, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to a poseur-buyer 0.02 gram of white crystalline substance contained in one (1) heat sealed transparent plastic sachet which was found positive to the tests for Methylamphetamine Hydrochloride, also known as "shabu", [a] dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[3]

On December 12, 2005, appellant was arraigned and pleaded not guilty.[4] Thereafter, trial on the merits ensued.

The prosecution presented two (2) witnesses, namely: poseur-buyer PO1 Kenneth E. Manuel[5]; and Forensic Chemist Alejandro de Guzman[6]

PO1 Manuel testified that on November 2, 2005 at around 3:10 o'clock in the afternoon, a civilian asset personally informed the PNP of Rodriguez, Rizal, where he was assigned that a certain alias "Toto Baho", who turned out to be appellant, has showed up again and has been selling dangerous drugs at Blk. 14, Lot 42, Phase I-A, Kasiglahan Village, Brgy. San Jose, Rodriguez, Rizal. This prompted them to request their Desk Officer to record the matter in their police blotter considering that they have been conducting a surveillance on said alias "Toto Baho" since October 31, 2005. A buy-bust operation was also organized where it was agreed that he was to act as the poseur-buyer. Incidentally, he was the one who marked in the presence of his co-police officers the buy-bust money consisting of two P100-peso bills with serial nos. L049511 and ZX630035 with his initials "KEM"[7] on the left hand portion thereof. Their team leader PO2 Joselito Infante also prepared a A Pre-Operation or Coordination Report with the PDEA. Thereafter, their team,[8] accompanied by the informant, proceeded to the

target place using a gold semi-closed van, a private vehicle with Plate No. WLU 701.

PO1 Manuel further testified that they arrived at Blk. 14, Lot 42, Phase I-A, Kasiglahan Village, Brgy. San Jose, Rodriguez, Rizal at around 3:30 o'clock in the afternoon of November 2, 2005. Upon seeing appellant, the civilian asset merely pinpointed appellant to them whom they saw outside his house. He immediately alighted from the vehicle and proceeded to approach appellant. He then told appellant of his intention to buy shabu to which appellant asked him for the payment of the shabu. He consequently handed over to appellant the buy-bust money worth P200.00 which appellant then placed in the latter's pocket. Thereafter, appellant drew from his pocket one plastic sachet which was subsequently given to him. Resultantly, he quickly held appellant's hand which was also the prearranged signal that the drug sale has been consummated. Meanwhile, he introduced himself as a police officer and warned appellant not to do anything wrong.

Upon PO1 Cristi's arrival, they effected the arrest on the person of appellant and informed the latter of his constitutional rights. He recovered from appellant the two P100-peso bills. They then brought appellant to the police station. It was only at the said station that he placed appellant's initials "LADC" on the seized plastic sachet suspected to contain shabu. The seized item was then forwarded to the PNP Crime Laboratory for examination per request made by their Chief of Police Manuel Pion. He and PO1 Cristi likewise executed a Joint Affidavit of Arrest⁹ dated November 2, 2005. However, it was only he who was able to sign it because PO1 Cristi had already left due to a call from his family.

Forensic Chemist Alejandro de Guzman identified the seized illegal drug in open court and testified that it was the very same specimen subject of the laboratory examination. The seized item of one heat-sealed plastic sachet with markings "EXHIBIT-LADC 02 Nov 05" containing 0.02 gram of white crystalline substance tested positive for the presence of methylamphetamine hydrochloride or shabu per Chemistry Report No. D-1401-0510 issued by him.

The defense presented appellant as its lone witness.

Appellant testified that he is 48 years old, married, a resident of Block 14, Lot 42, Kasiglahan Village, San Jose, Rodriguez, Rizal and works as a repairman of electric fans while his wife Rosemarie works as a sweeper. At around 3:00 to 4:00 o'clock in the afternoon of November 2, 2005, he together with his wife Rosemarie and their little child, were just sleeping in their house. He was suddenly awakened when two armed policemen in civilian clothes barged inside and handcuffed him, telling him at the same time not to move. They also asked him about illegal drugs but he immediately denied having knowledge thereof. Despite his wife's intervention who was crying while asking the policemen why he was being arrested, he still boarded in a van and brought to the police station. While thereat, he was asked if he knew certain pusher and that at the same time accused him of being a "seller" even if he did not know what exactly he was being accused of selling. A plastic sachet was shown to him by PO2 Infante. It was also during his detention that he came to learn of the arresting officers' names, namely; PO1 Manuel who held his arms and PO2 Infante who handcuffed him. However, he did not file a case against them because he was afraid, his children being still very young. He also does not want his children to get involved and suffer as a consequence thereof. He has never been previously charged with any crime nor has seen a shabu or marijuana.

In a Decision^[11] dated August 28, 2008, the court a quo convicted appellant of the crime of illegal sale of shabu. It found appellant's testimony incredible, weak and self-serving in view of the positive testimonies of the prosecution witness which established the material facts constituting the crime charged. It was absurd that the wife of appellant failed without valid reasons to testify to corroborate appellant's testimony. The pertinent portions of the decision are quoted:

After a careful study of the evidence, the Court is convinced that the accused committed the offense charged. The material fact constituting the offense is the act of selling the dangerous drugs. That fact has been sufficiently established by the evidence of the prosecution.

The accused (sic) defense is anchored on the theory that the charge against him is fabricated. At the time of the arrest, he was sleeping in his house with his family. But as to why he was singled out by the police officers [,] he said nothing.

When he was arrested, his wife according to the accused got worried for him and was crying. She was surprised by the arrest just as he was and repeatedly tried to find out the cause therefor. With the anxiety exhibited by the wife, one would expect that she would move mountains to get the opportunity to defend her husband, the accused. But it was not opportunity to defend her husband, the accused, (sic) But it was not opportunity to defend her husband, the accused, (sic) But it was not the case at all. The wife did not appear in court without explanation despite being subpoenaed twice. This makes one wonder whether the accused is telling the truth during his testimony. For if he was, he would have no trouble convincing his wife to testify for him. Her non-appearance notwithstanding [,] the two subpoenas sent by the Court speaks volumes against the accused.

Indeed, there is no test of the truth of human testimony except its conformity to our knowledge, observation and experience (Fronzarina vs. Malazarte, G.R. No. 148423, December 6, 2006). Pitted against such Standard, the tale of accused fails miserably.[12]

Aggrieved, appellant lodged the instant appeal raising the following assignment of errors, to wit:[13]

- THE COURT A QUO GRAVELY ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTION 5, ARTICLE II, REPUBLIC ACT NO. 9165
- THE COURTS A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO APPELLANTS DEFENSE OF FRAME-UP AND DENIAL.

THE ISSUE

The main issue is whether the prosecution was able to prove beyond reasonable doubt the guilt of appellant.

THE COURT'S RULING

The appeal is meritorious.

Appellant contends that the prosecution failed to establish by proof beyond reasonable doubt the elements of the crime charged. It failed to establish the chain of custody of the corpus delicti thereby casting doubt as to its integrity and identity. There were also violations of the procedure on the handling, custody and disposition of seized illegal items. Such being case, the presumption of regularity in the performance of official duties should not be accorded to the arresting officers.

We agree.

While this Court is aware that there is no hard and fast rule in the conduct of a buy-bust operation or that there is no requirement that a surveillance and test-buy should first be made prior to a buy-bust, its limitation, however, is the observance of the accused's constitutional rights. What this Court thus wants to point out is the prosecution's failure to prove the validity of the of the conduct of the buy-bust thereby making appellant's arrest dubious.

It has been held in *People vs. Ong*[14] that it is the duty of the prosecution to present a complete picture detailing the buy-bust operation from the initial contact between the buyer and the pusher, the offer to purchase, the

promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal subject of sale. Failing in this duty, the buy-bust operation will be greeted with burrowed brows.

Here, PO1 Manuel testified that after the informant pinpointed appellant, he immediately alighted from the vehicle and approached appellant. He was not accompanied by the informer at all to do the usual introductions, PO1 Manuel being unknown to appellant. This is usually the common practice in buy-bust operations whereby the presence of the informant is deemed vital in the conduct of the drug transaction since this would show how the transacting parties, usually strangers, came into contact with each other.

Further, the incredibility of the alleged transaction is bolstered by other attendant circumstances in that the alleged drug sale was made in broad daylight, which was at 3:30 o'clock in the afternoon of November 2, 2005, and in an open and public place. More importantly, there was no definite and certain agreement made as to the price and quantity of the drugs to be purchased. Yet, appellant appears to have already in his possession the drug to be sold without him having to quote any price therefor. Otherwise stated, PO1 Manuel would seem to have already known the price and quantity of the drugs available in the pocket of appellant at that very precise moment. This is highly improbable considering that both are strangers to each other. This fact alone should make appellant wary or cautious about the situation if indeed he was a drug pusher. Clearly, this is contrary to ordinary human behavior. In that illegal dealings are generally made discreetly and away from the open public to avoid detection by the proper authorities. We quote the pertinent portions of PO1 Manuel's testimony:

On Direct Examination

Q

What time did you arrive at the place, if you can recall?

A

More or less three-thirty (3:30 P.M.) in the afternoon, sir

Q

Now, when you arrived at the place, what happened, if any?

A

After our civilian informant pointed to us the person of alyas Toto Baho, I immediately alighted from the vehicle and proceeded to where Toto Baho was, sir, and I approached him and told him my intention of buying shabu from him and then, he asked from me the payment of that shabu.

Q

After that, what happened next, if any?

A

He drew from his pocket one (1) plastic sachet and handed it to me, sir, and thereafter, I held his hand, sir, because that was our pre-arranged signal and when he was about to enter his house, I was able to held his arms.

Q

Let us make this clear, Mr. Witness. What happened to the money? Who gave it to the accused?

A

I gave it to him, sir, because he asked it from me.

Q

So, when you gave the money to him, he placed it inside his pocket?

A

Yes, sir.

Q

And, After that?

A

He gave me the plastic sachet after I have given him the money, sir.

Q

How many plastic sachets are you referring to?

A

One (1) plastic sachet, sir. [TSN, July 31, 2006, pp. 8-9]

The incredibility of prosecution witness PO1 Manuel's testimony is further bolstered by the material inconsistencies relative to the conduct of the buy-bust operation. Jurisprudence is replete that the successful prosecution of drug cases largely depends on the credibility of its witnesses, which this Court finds wanting.

Firstly, PO1 Manuel testified that after they received the report from the civilian asset on November 2, 2005, they immediately prepared the Pre-operation/ Coordination Sheet with the PDEA on even date for the intended conduct of the buy-bust operation.[15] However, a perusal of the said Pre-Operation Report/Coordination Sheet with Control Number: PDEA 4A10-138-2005[16] shows that it was dated way back in October 31, 2005. The report also indicated that the buy-bust team consisted of five (5) police officers but PO1 Manuel testified that there were actually three (3) of them who actually conducted the buy-bust operation, namely: his own person; PO2 Infante; and PO1 Cristi.[17]

Secondly, PO1 Manuel testified that he wrote the markings of the buy-bust money with his initials "KEM" on the left side portion of the bill.[18] However, a perusal of the buy-bust money[19] shows that the said markings were actually placed on the front rightmost corner portion of the bills.

Lastly, PO1 Manuel testified that the report received from the civilian asset, buy-bust money and other preparations made for the conduct of the buy-bust operation as well as the seized item as a consequence thereof were all entered in the police blotter.[20] However, when asked to produce the police blotter, he merely replied

that the same was lost sometime in December 2005.[21]

Even if this Court is to set aside the questionable conduct of the buy-bust operation, appellant would still be acquitted of the crime charged for failure of the prosecution to establish with certainty the chain of custody of the corpus delicti.

"Chain of custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or sources of dangerous drugs or laboratory equipment at each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court and destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the dates and times when such transfers of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.[22] The corpus delicti must be presented as evidence in court,[23] and that the same should be identified with unwavering exactitude.[24]

In *Zarraga vs. People*[25] citing *People vs. Laxa*[26] and *People vs. Kimura*,[27] the Supreme held that the deviation from the standard procedure in anti-narcotics operations produces doubts as to the origins of the marijuana and concluded that the prosecution failed to establish the identity of the corpus delicti.

Here, a perusal of the records shows that the chain of custody of the corpus delicti after it left the hands of PO1 Manuel was no longer established. All that PO1 Manuel could testify was that he had initial custody of the seized illegal drug and marked the same with appellant's initials "EXHIBIT-LADC 02 Nov. 05" at the police station in the presence of PO2 Infante and an unnamed police officer, and that thereafter, the seized item was then brought to the PNP Crime Laboratory for examination. He clearly did not specify as to whom he turned over to the seized illegal drug, who then brought it to the crime laboratory, who received and took custody of it after it was examined. The pertinent portions of PO1 Manuel's testimony is quoted hereunder:

On Direct Examination

Q

Now, you stated that there is only one plastic sachet, I am showing to you a plastic sachet, will you please go over that carefully and tell if this is the sachet you are referring to?

A

Yes, sir, this is it because I had my initials placed on it, sir, I also wrote the initials LADC.

Q

What do you mean by LADC?

A

This is the initial of the accused, sir, Leonardo Arcilla dela Cruz.

Q

Now, who were present when you signed and placed the initials of the accused?

A

Our tern leader and our co-police officer, sir.

Q

Now, what did you do with the plastic sachet?

A

After that, sir, we forwarded it to the PNP Crime Lab. for examination.

Q

Who made the request?

A

Our Chief of police P/Supt. Manuel Pion, sir.

* * *

Q

Who is the officer of the case?

A

PO1 Allan Poe V. Dela Cruz, sir.

[TSN, July 31, 2006, pp. 11-12]

In *People vs. Barba*[28] citing *Malilin vs. People*,[29] the Supreme Court held that the chain of custody requirements must be met in proving that the seized drugs are the same ones presented in court: (1) testimony about every link in the chain, from the moment item was picked up to the time it is offered into evidence; and (2) witnesses should describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the item. Thus, in *People vs. Garcia*,[30] the accused was acquitted due to the failure of the state to show who delivered the drugs to the forensic laboratory and who had custody of them after their examination by the forensic chemist and pending their presentation in court.

Well-settled is the rule in criminal law that the evidence for the prosecution must stand or fall on its own weight[31] and cannot be allowed to draw strength from the weakness of the defense.[32] Further, it is a hornbook doctrine that if inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[33]

WHEREFORE, premises considered, the instant appeal is hereby granted. The Decision dated August 28, 2008 of

the Regional Trial Court, Branch 77, San Mateo, Rizal is REVERSED and SET ASIDE. Accused-appellant is ACQUITTED of the crime of violation of Section 5, Article II of Republic Act No. 9165. Accordingly, the Director of Bureau of Corrections is directed to cause the immediate release of accused-appellant, unless the latter is being lawfully held for another cause.

SO ORDERED.

Carandang and Barrios, JJ., concur.

[*] Court of Appeals Reports Annotated, Vol. 49.

[1] RTC Decision dated August 28, 2008 penned by Judge Ismael P. Casabar, Rollo, pp. 9-11.

[2] Records, p. 1.

[3] Emphasis not Ours.

[4] RTC Order dated December 12, 2005 issued by Judge Francisco C. Rodriguez, Records, p. 27; Certificate of Arraignment dated December 12 2005, Records, p. 28; Minutes of the Hearing held on December 12, 2005, Records, p. 29.

[5] TSN, PO1 Kennet E. Manuel, July 31, 2006.

[6] TSN, Forensic Chemist Alejandro de Guzman March 6, 2006.

[7] Kenneth Escobar Manuel per his TSN, July 31, 2006, p.6.

[8] Composed only of PO2 Joselito Infante as team leader, and PO1 Kenneth E. Manuel and PO1 Lauro Cristi as members; TSN, PO1 Kenneth Manuel, July 31, 2006, pp. 6-8.

[9] Records, p. 134.

[10] Records, p. 141.

[11] Supra, at note 1.

[12] Records, pp. 10-11.

[13] Rollo, p. 18.

[14] People vs. Ong. G.R. No. 137348, June 21, 2004 cited in Cabugao vs. People, G.R. No. 158033, July 30, 2004.

[15] TSN, PO1 Kenneth Manuel, July 31, 2006, p. 7; TSN, Kenneth Manuel, February 26, 2007, pp. 5-6.

[16] Records, p. 135.

[17] TSN, Kenneth Manuel, July 31, 2006, p. 6.

[18] TSN, PO1 Kenneth Manuel, July 31, 2006, p. 6.

[19] Records, p. 138: Exhibits "E" to "E-3".

[20] TSN, PO1 Kenneth Manuel, July 31, 2006, p. 5; TSN, PO1 Kenneth Manuel, February 26, 2007, pp. 5-6.

[21] TSN, Kenneth Manuel, April 2, 2007, pp. 3-4; Records, p. 116; Exhibit "K".

- [22] Section 1 (b) of the Dangerous Drugs Board Regulation No. 01-02.
- [23] Zarraga vs. People, G.R. No. 162064 March 14, 2006.
- [24] Zarraga vs. People, supra citing People vs Kimura, G.R. No. 130805, April 27, 2004, 428 SCRA 51.
- [25] Zarraga vs. People, supra.
- [26] Zarraga vs. People, supra citing People vs. Laxa. 414 Phil. 156 (2001).
- [27] Zarraga vs. People, supra citing People vs. Kimura, supra.
- [28] People vs. Barba, G.R. No. 182420, July 23, 2009.
- [29] Malilin vs. People, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 633 cited in People vs. Barba, supra.
- [30] People vs. Garcia, G.R. No. 173480, February 25, 2009 cited in People vs. Bgrba, supra.
- [31] People vs. Tan, G.R. No. 129376, May 29, 2002 citing People vs. Ramil Marquina, G.R. No. 130213, 31 January 2002, p. 14.
- [32] People vs. Tan, supra citing People vs. Samson, et al., G.R. No. 133437, 16 November 2001, p. 17, citing People vs. Balderas, 276 SCRA 470, 480 [1997]; People vs. Batidor, 303 SCRA 335 [1999]; People vs. Edraiin Taboga, 6 February 2002, p. 14.
- [33] People vs. Tan, supra citing People vs. Malbog, G.R. No. 106634, 12 October 2000, 342 SCRA 620, 641, citing People vs. Ferras, 289 SCRA 94, 108 [1998]. citing People vs. Fider, 223 SCRA 117, 134 [1993].

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