

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHUNG SHIAO TSENG AND LEUNG KUAN, ACCUSED-APPELLANTS.

Ponente: ENRIQUEZ, JR., J.

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ENRIQUEZ, JR., J.:

This is an appeal from the Decision rendered by the Regional Trial Court (hereafter RTC), Branch 6, Baguio City in Criminal Case No. 17409-R for Violation of Sec. 16, Art. III, Republic Act 6425, as amended by Republic Act 7659, the dispositive portion of which reads as follows:

“WHEREFORE, the Court Finds (sic) the accused Chung Shiao Tseng and Leung Kuan guilty beyond reasonable doubt of the offense of Illegal Possession of 10.397 kgs. of shabu in violation of Sec. 16, Art. III of R.A. 6425 as amended by R.A. 7659 as charged in the Information in conspiracy with another whose whereabouts is yet unknown and hereby sentences each of them to suffer the penalty of Reclusion Perpetua and to pay a fine of 1 million pesos each without subsidiary imprisonment in case of insolvency and to pay the proportionate costs.

The 10.397 kgs. of shabu contained in 11 plastic bags are ordered forfeited in favor of the state to be destroyed immediately in accordance with law.

The accused Chung Shiao Tseng and Leung Kuan being detention prisoners are entitled to be credited 4/5 of their preventive imprisonment in the service of their sentence in accordance with Article 29 of the Revised Penal Code.

SO ORDERED.”

The facts of the case as culled from the records are as follows:

On January 28, 2000, appellants Shiao Tseng (hereafter Tseng) and Leung Kuan (hereafter Kuan), together with one Antonio Lim Kao were charged in an Information for Violation of Sec. 16, Article III, R.A. 6425, as amended by R.A. 7659, the accusatory portion of which reads:

“That on or about the 12th day of January, 2000, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, and without any authority of law, did then and there willfully, unlawfully and feloniously have in their possession and control 10.397 kgs. of Methamphetamine Hydrochloride (SHABU), a regulated drug, in violation of the aforecited provision of law.

CONTRARY TO LAW.”

Appellants Tseng and Kuan were arrested while Antonio Lim Kao remained at large. Upon arraignment on June 7, 2000, appellants pleaded not guilty to the charge. During trial, the prosecution presented the testimonies of P/Insp. Reynaldo Biay (hereafter P/Insp. Biay), PO3 Kenneth Malikchan (hereafter PO3 Malikchan), PO2 Arsenio Arrojo (hereafter PO2 Arrojo), P/Insp. Ricarte Marquez (hereafter P/Insp. Marquez), Forensic Chemical Officer Mary Leocy Jabonillo (hereafter Forensic Chemical Officer Jabonillo), Julita Dimapilis (hereafter Julita),

Ronnie Failoga and P/Supt. Isagani Nerez (hereafter P/Supt. Nerez). From their testimonies, the prosecution established the following facts:

Sometime in the first week of January 2000, Roberto Peralta (hereafter Roberto) informed P/Supt. Nerez, the Regional Officer of the 14th Regional Criminal Investigation and Detection Group (CIDG), that he saw appellants repacking and selling “shabu” at No. 33 Johnbee Village, Baguio City. Said information was confirmed when PO3 Nicasio Salamera (hereafter PO3 Salamera) and PO2 Rocel Cejas (hereafter PO2 Cejas) conducted a surveillance operation.

Accordingly, P/Supt. Nerez instructed P/Insp. Marquez to apply for a search warrant against appellants for possible violation of the Dangerous Drugs Act of 1972. P/Insp. Marquez, together with his witnesses PO3 Salamera, PO2 Cejas and Roberto, proceeded to the Municipal Trial Court in Cities, Branch 1, Baguio City to secure the search warrant.

On January 12, 2000, finding the application to be in order, and upon examination of the witnesses, Judge Benjamin C. Buena issued a search warrant.

P/Supt. Nerez then formed a team composed of P/Insp. Biay, P/Insp. Marquez, P/Insp. Rodolfo Castil, SPO4 Mariano Rabaja, PO3 Malikchan and PO2 Arrojo to implement the search warrant.

Records show that appellants and Antonio Lim Kao were occupying the entire second floor of the place indicated in the search warrant as No. 33 Johnbee Village, although one Cesar Go was renting the said apartment unit.

While the operation against appellants was being planned by the CIDG, the Presidential Anti-Organized Crime Task Force (PAOCTF) and the Baguio City Police carried out another operation against appellants to rescue a kidnapped victim.

On January 11, 2000, acting on the report of one Cai Yanhua that her husband, Sin Ho, was kidnapped and was being detained at No. 33 Johnbee Village in Baguio City, operatives of the PAOCTF raided the place where Tseng was arrested. The Baguio Police arrested Kuan while he was trying to escape. The authorities were able to rescue three kidnapped victims, including Sin Ho. Recovered from the top of the table in the sala where Tseng was arrested was 16.22 grams of suspected shabu. When the raiding team left, Julita, the caretaker of the apartment padlocked the second floor. The foregoing arrests led to the filing of three (3) Informations for kidnapping and serious illegal detention on two (2) counts and one (1) count for violation of R.A. 6425 as amended by R.A. 7659.

However, the CIDG was unaware of the operation conducted by the PAOCTF and the Baguio Police. The following day, January 12, 2000, by virtue of the search warrant, another operation was carried out by the CIDG in the apartment unit.

Since Julita had previously locked the second floor, the CIDG called her to assist in unlocking the place and to search the premises. That afternoon Julita unlocked the apartment unit for PO3 Malikchan and PO2 Arrojo to search the premises. Before the search, Ronald Caliwan (hereafter Ronald), a resident of the place and Lydia Smith (hereafter Lydia), a tenant of the first floor, were asked by the CIDG to witness the search.

In the course of the search, PO2 Arrojo, while being accompanied by Ronald, found one rolled aluminum foil, a porcelain bowl, an improvised tooter, an improvised burner and a lighter inside the sala.

On the other hand, Julita and Lydia accompanied PO3 Malikchan in searching the kitchen. Julita informed the operatives that she had noticed a hole on the kitchen cabinet. PO3 Malikchan searched the cabinet and saw some crystalline substances scattered thereat, he knocked on the cabinet and found that it was hollow. Further search

revealed that the hanging L-type cabinet has a hole and inside the hole he discovered eleven (11) plastic bags containing white crystalline powder. He then called PO2 Arrojo, who helped him bring out the plastic bags. During which time, Julita, Lydia and Ronald witnessed the operatives take out the plastic bags from the cabinet's hole.

A Joint Affidavit (Records, pp. 7-12) was executed by the raiding team, which contained a list of the items found in the premises. A Receipt (Records, p. 15) of the items confiscated was made and signed by P/Insp. Rodolfo Castil, Jr., which was signed by Lydia and Ronald as witnesses.

A Certification (Records, pp. 18-19) was executed by Julita attesting to the fact that she witnessed and was present at all times during the search conducted by the CIDG. Lydia and Ronald also signed said certification as witnesses.

The seized items were later forwarded to the PNP Crime Laboratory in Camp Crame for examination.

Forensic Chemical Officer Jabonillo examined the seized items. After conducting several tests, she concluded that the eleven (11) plastic bags, with a combined weight of 10.397 kgs., contained methamphetamine hydrochloride, a regulated drug.

On their part, appellants denied all the charges against them.

Tseng testified that he was hired by one Chen Yen as their family driver sometime in November 1999. Since then, he resided at the house of his employer in Green Valley, Baguio City. In the afternoon of January 10, 2000, he was asked by Chen Yen to fetch the latter's husband, Shiang Hai Chua at No. 33 Johnbee Village, Baguio City. However, when he arrived thereat, Shiang Hai Chua was not there, so he waited for him and spent the night there. In the early morning of January 11, 2000, the 2nd floor of No. 33 Johnbee Village was raided and he was arrested while sleeping in one of the rooms. Thereafter, he was detained at the PAOCTF office where he was interrogated, maltreated and tortured.

On his part, Kuan testified that he is a cook by profession and that sometime in November 1999, he was hired by a Chen Yen to be their family cook at their residence at Green Valley, Baguio City. Since then, he resided at the basement of his employer's residence at Green Valley. On two occasions in November and December 1999, he was sent by Chen Yen to the 2nd floor of No. 33 Johnbee Village to cook for her visitors thereat. After cooking, he went back to Green Valley. In the morning of January 11, 2002, he was on his way to No. 33 Johnbee Village to get some spices, which he needed at Green Valley, when he was arrested by police officers at the intersection of Magsaysay Avenue and Bokawkan Rd. Baguio City. Thereafter, he was brought to the PAOCTF office where he was detained, interrogated, tortured, maltreated and his little finger cut.

On April 26, 2002, the RTC rendered the assailed decision finding appellants guilty of the crime charged. Hence, the present appeal. As per Resolution dated January 14, 2004, the Court granted and considered Appellants' Memorandum for the Accused (Records, pp. 276-307) dated April 16, 2002 as their brief. The issues raised by appellants are as follows:

I

THE TESTIMONIES OF THE PROSECUTION'S WITNESSES ARE FULL OF MAKE-BELIEVE STORIES, TAINTED LIES AND CONCOCTIONS, INCONSISTENCIES AND IRRECONCILABLE CONTRADICTORY STATEMENTS.

II

THE 11 PACKS OF SHABU COULD NOT HAVE FIT INTO THE HOLE WHERE THEY WERE

ALLEGEDLY FOUND.

III

THE SEARCH WARRANT OBTAINED BY THE CIDG IS INVALID AND THEREFORE ALL EVIDENCE SEIZED ARE NOTHING BUT FRUITS OF A POISONOUS TREE

The appeal is without merit.

Being interrelated, the first and second issues will be discussed jointly.

Appellants mainly question the veracity of the testimonies of the prosecution's witnesses and maintain that there is no credible testimony upon which their conviction could be anchored.

The cardinal rule in this jurisdiction is that where the issue is one of credibility of witnesses, reviewing courts generally will not disturb the findings of the trial court (*People vs. Patoc*, 398 SCRA 62).

The manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who had the unmatched opportunity to observe the witnesses and assess their credibility by the various indicia available but not reflected on record. The demeanor of the person on the stand can draw the line between fact and fancy or evince if the witness is telling the truth or lying through his teeth. It has been consistently ruled that when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial courts are generally viewed as correct and entitled to great weight. Furthermore, in an appeal, where the culpability or innocence of the accused depends on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect, if not finality (*People vs. Rivera*, 384 SCRA 12).

Equally important is the trial court's assessment of the substance and quality of the testimony of the witnesses. In this light, magistrates have always been guided by the legal truism that evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself (*People vs. Rivera*, *ibid*).

Appellants insist that there were inconsistencies in the testimonies of the prosecution witnesses. However, we do not find their testimonies inconsistent or contradictory with one another. At this point, it is relevant to cite the observation of the Solicitor General:

“In particular, appellants assert that the testimonies of PO3 Malikchan and Dimapilis (i.e. Julita Dimapilis) as to who discovered the packs of shabu are contradictory. This is simply incorrect. Their testimonies are not at all contradictory. Rather, they are complementary with one another since Dimapilis' testimony pertains to her having noticed the hole in the cabinet while PO3 Malikchan was actually the one who investigated and discovered the shabu stashed inside it.

Appellants also sought to discredit the testimony of P/Insp. Marquez whose declaration that he did not join the searching team at the time the search warrant was implemented supposedly contradicted the testimony of P/Supt. Nerez that Marquez headed the perimeter security. This is also incorrect for being brought about by a simple misappreciation of the tenor of the testimonies. As mentioned above, P/Insp. Marquez was actually with the entire team that implemented the search warrant but he was not one of the officers who composed the searching party or those who actually proceeded to go around and inspected the premises. In fact, the officers tasked to do this were PO3 Malikchan and PO2 Arsenio Arrojo. Incidentally, PO3 Malikchan declared that P/Insp. Marquez was actually with the raiding team that went to No. 33 Johnbee Village.

Appellants find fault in the statement of PO3 Malikchan that the subject search warrant was in the possession of P/Insp. Marquez since it supposedly contradicts the statement of PO2 Arrojo that the warrant was then in the possession of P/Supt. Nerez. This assertion is totally misplaced considering that both PO3 Malikchan's and

PO2 Arojo's (sic) statements on the matter are not material to the issue of their credibility. It is worth noting that Supt. Nerez and P/Insp. Marquez are two of the senior officers in the team. As such either of them is expected to be in the possession of the search warrant such that it is understandable that at one time PO3 Malikchan may have witnessed the same to be in the possession of P/Insp. Marquez and at another time PO2 Arojo (sic) witnessed it to be in the possession of P/Supt. Nerez.

In the same manner, appellants allege contradiction in the statement of P/Supt. Nerez that he fetched Dimapilis in relation to Dimapilis' own statement that she was personally fetched by someone else upon the instruction of P/Supt. Nerez. This too is a weak assertion for the purpose of tainting the testimonies of the prosecution. The actual narration of P/Supt. Nerez during his cross-examination reads:

q When was that when you had the first conversation with Julita Dimapilis?

a As I said earlier, that was before 4:00 o'clock. I can not recall the exact time but it was between 3:00 to 4:00 o'clock on January 12, 2000, sir.

q And you said that, did Julita Dimapilis actually arrive?

a She did not arrive, sir. As I have said, we fetched her at the Tabora house near the Pink Sister's Convent, sir. We fetched her and we all together went to House No. 33 Johnbee Vil. And she was the one who opened the door (TSN, September 3, 2001, pp. 48-49).

Dimapilis' own narration corroborated P/Supt. Nerez' statement which reads:

q Where were you when they called you in the afternoon of January 12, a Wednesday year 2000 about their intention to search the place?

a I was at the house of my kumare, sir.

q What time on January 12, 2000, Wednesday, when these members of the CIDG came to call you in the house of your kumare?

a That was already dusk sir.

q Who among the CIDG persons came to call you?

a What I could recall as their names are Atty. Nerez and Major Biay.

q Where did this two CIDG personnel Atty. Nerez and Major Biay bring you from the house of your kumare?

a We went to No. 33 Johnbee Village (TSN, February 28, 2001, p. 27).

Clearly, there is no contradiction in the declarations of Dimapilis and P/Supt. Nerez. On the contrary, they also complement each other. The exact events simply show that P/Supt., Nerez and his men came to fetch Dimapilis at her friend's house and they proceeded to the target house to enforce the search warrant. There is no reason to read totally divergent meanings from the two statements (Brief for the Plaintiff-Appellee, pp. 11-14, Rollo, pp. 98-101)."

From the foregoing the alleged inconsistencies and contradictory statements made by the witnesses are not apparent. The testimonies of the witnesses not only compliment each other but even bolsters a conclusion that they were not rehearsed. The rule is that inconsistencies on minor details do not destroy the probative value of the testimonies of the witnesses because they may be due to an innocent mistake and not to a deliberate falsehood. Although there may be inconsistencies on minor details, the same do not impair the credibility of the witnesses where there is consistency in relating the principal occurrence and positive identification of the assailant, specially in the face of conflicting testimonies. Slight contradictions in fact, even serve to strengthen the sincerity of the

witness and prove that his testimony is not rehearsed. They are safeguards against memorized perjury (People vs. Lindo, 394 SCRA 366).

Also, appellants' contention that the 11 packs of shabu could not have fit inside the hole where they were found is without merit. The contention of appellants that the hole in the cabinet were too small to contain the packs of shabu remains to be mere conjectures and surmises not supported by the evidence on record as against that of the prosecution who have proven their case beyond reasonable doubt.

As regards the third issue, appellants argue that the search warrant secured by the CIDG was not obtained in accordance with law. Thus, any evidence seized by virtue thereof is inadmissible for being fruits of the poisonous tree. We do not agree.

For the validity of a search warrant, the Constitution requires that there be a particular description of "the place to be searched and the persons or things to be seized." The rule is that a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community. Any designation or description known to the locality that leads the officer unerringly to it satisfies the constitutional requirement (People vs. Francisco, 387 SCRA 569). In the case at bar, all the requisites for the issuance of a valid search warrant was complied with. The assailed decision of the RTC thoroughly discussed the validity of its issuance. As aptly held by the RTC:

"3. The search warrant issued by Judge Buena is valid as the record of the proceedings in the Municipal Trial Court would show that the requirements for the issuance of a search warrant were complied with.

What needs to be established for the purpose of issuing a search warrant is only probable cause and not proof beyond reasonable doubt.

xxx xxx xxx

From the above provisions of the Constitution and the Rules of Court, the requisites for a valid search warrant are:

- The issuing judge must have personally examined in the form of searching questions and answers the applicant and/or his witnesses and taken down their written deposition;
- It must be issued upon probable cause;
- Such Probable cause must be determined by the issuing judge personally;
- The search warrant must particularly describe the property to be seized as far as circumstances will allow;
- It must describe the place to be searched;
- It shall issue for one specific offense;
- It must not have been issued more than 10 days prior to the search made pursuant thereto.

Here, all the above requisites are present and complied with as shown by the record of the proceedings before Judge Benjamin Buena of the MTC transmitted to this Court.

First, Judge Benjamin Buena personally examined the applicant Ricarte Marquez and his eye witness Roberto Peralta. The questions of Judge Buena during the examination of the witness Roberto Peralta cannot be said to be wanting and not searching and not probing enough. What are searching and probing questions would depend on circumstances and necessarily relative. The questions must to a great degree depend upon the judge making the examination. What is important is that the questions bring out such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the

articles in connection with the offense sought to be seized are in the place sought to be searched.

And here, the transcript of stenographic notes shows that Judge Buena asked Roberto Peralta if people frequently go to the place at No. 33 Johnbee Village, Bokawkan Rd., Baguio City and if he noticed Chinese nationals passing plastic envelopes to the people and Roberto Peralta answered that Johnson Tan passes something to these Chinese nationals and he saw these Chinese nationals repacking shabu in packed form or solid form. And aside from these substances, he saw aluminum foils, lighters and burners used for the shabu and he knows these things because he used the same things before. And Roberto Peralta said he saw all these things because he went there at No. 33 Johnbee Village and saw it all when he peeped thereat.

Second, the search warrant was issued upon probable cause.

The transcript of the examination or deposition of Roberto Peralta together with the application for search warrant clearly show that he was an eyewitness to the repacking of shabu and the passing thereof at No. 33 Johnbee Village, Baguio City.

The testimony of Roberto Peralta during the examination by Judge Buena were certainly based on his personal knowledge. They are not hearsay information.

There is, therefore, probable cause to believe at that stage that the accused who were at No. 33 Johnbee Village at the time were in possession of shabu in violation of the law and for the issuance of the search warrant to seize said shabu in said place.

Third, the probable cause was determined by Judge Buena personally as he himself conducted the examination on the eyewitness Roberto Peralta as shown by the transcript of stenographic notes of the search warrant proceedings. And when he was satisfied that there was probable cause, he issued the search warrant.

Fourth, the search warrant itself, considering its tenor particularly described the property to be seized as far as the circumstances will allow. What was possessed by and under the control of the people in No. 33 Johnbee Village in violation of the law and sought to be seized were mentioned specifically and with certainty in the search warrant as shabu or methamphetamine hydrochloride and shabu paraphernalia such as tooter, aluminum foil, lighter, burner and weighing scale, which were allegedly in the possession of Chung Shiao Tseng, Leung Kuan and Antonio Lim Kao at No. 33 Johnbee Village.

Fifth, the search warrant particularly described the place to be searched as the residence at No. 33 Johnbee Village, Bokawkan Rd., Baguio City wherein Chung Shiao Tseng, Leung Kuan and Antonio Lim Kao were staying. No other place was mentioned and so no other place was to be searched under the said search warrant. The place is particularly described as No. 33 Johnbee Village, occupied by Leung Kuan, Chung Shiao Tseng and Antonio Lim Kao.

Sixth, the search warrant was issued for only one offense, that is, for illegal possession of shabu in an undetermined quantity.

Seventh, the search warrant certainly was not issued more than 10 days prior to the search made pursuant thereto. In fact, the search warrant that was issued January 12, 2000 was served and implemented on the same day.

Hence, the search warrant was validly issued.

The implementation and execution of the search warrant was also legal as the same was served at the aforesaid place at No. 33 Johnbee Village occupied by Chung Shiao Tseng, Leung Kuan and Antonio Lim Kao in the presence of Julita Dimapilis, the caretaker of the house and two other witnesses of sufficient age and discretion residing in the area namely Lydia Smith and Ronald Caliwan.

Hence, the implementation and execution of the search warrant was legal. The requirements of the Constitution

and the rules of Court and the Law for the issuance implementation and service of the search warrant were complied with (Decision, pp. 8-11, Rollo, pp. 44-47).”

We find that the prosecution has adequately and convincingly proved that appellants were guilty beyond reasonable doubt of the crime as charged. The positive and convincing testimonies of the witnesses, coupled with the documentary evidence presented, lead only to the inevitable conviction of appellants for the crime imputed upon them.

In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. These circumstances of illegal possession are obtaining in the case at bar.

Pursuant to Section 16, Article III of R.A. 6425, as amended by Section 16 of R.A. 7659, in relation to Section 20 of R.A. 7659, the penalty of Reclusion Perpetua to death and a fine ranging from Five Hundred Thousand Pesos to Ten Million Pesos shall be imposed upon any person caught in possession of 200 grams or more of shabu.

Considering that there is no aggravating nor mitigating circumstance that accompanies the commission of the crime, the trial court was correct in imposing the penalty of Reclusion Perpetua.

As regards the fine imposed by the trial court, it has been held that courts may fix any amount within the limits established by law; and in fixing the amount in each case, attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit (People vs. Khor, 307 SCRA 295). In view of the large quantity of shabu that was confiscated, we find no reason to disturb the trial court’s imposition of fine in the amount of One Million Pesos (P1,000,000.00) for each of the appellants.

WHEREFORE, premises considered, the appeal is DENIED. The assailed Decision dated April 26, 2002 is AFFIRMED.

Pursuant to Section 13 (c), Rule 124 of the Revised Rules of Criminal Procedure, appellants may appeal this case to the Supreme Court via a Notice of Appeal filed before this Court.

SO ORDERED.

Jacinto, (Chairman) and De Leon, JJ., concur.

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