

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLITO USON Y ESGUERRA, ALIAS “JUN PONGGI”; ACCUSED-APPELLANT.

G.R. No. 101313. July 05, 1993

Ponente: REGALADO, J.

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REGALADO, J.:

For supposedly peddling a pittance (0.02 gram) of methyl amphetamine hydrochloride, a regulated drug popularly known as "shabu" in the despicable world of drug addicts and pushers, accused-appellant Carlito Uson y Esguerra now faces the grim prospect of having to live out what could otherwise be the productive years of his life behind the detentive confines of prison bars. Appellant, however, has not abandoned all hope and is now before us to appeal his conviction by the Regional Trial Court of Pasig, Branch 165, of a violation of Section 15, Article III of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended.

On May 29, 1990, Fourth Assistant Prosecutor Adelina Calderon-Bargas of the Office of the Provincial Prosecutor in Rizal charged appellant in Criminal Case No. 1215-D in the Regional Trial Court of Pasig, Metro Manila with the said offense allegedly committed as follows:

"That on or about the 24th day of May, 1990, in the Municipality of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized, did then and there willfully, unlawfully and (sic) feloniously and knowingly sell and deliver 0.02 gram of white crystalline substance positive for methamphetamine hydrochloride which is a regulated drug."[1]

In support of this indictment, the prosecution adduced evidence intended to show that at 9:00 A.M. of May 23, 1990, the Anti-Narcotics Unit of the Pasig Police Station received information from one Cesar "Bobong" Esmeli, a barangay councilman, that a person known as "Jun Ponggi" was engaged in the sale of illicit drugs along A. Santos Street in Barrio Buting, Pasig. Sgt. Rodolfo Gonzales, the station chief, forthwith organized a surveillance team composed of Patrolmen Raul Casino, Florencio Evangelista, Raul Santiago and Jorge Alombro, together with a certain Placido.[2]

At 4:00 P.M. of that day, the police operatives were able to track down appellant. Pat. Casino was then introduced to the latter by an "asset" provided by Esmeli as a drug addict who wanted to "score." Appellant told Casino to return at eight o'clock that evening, which the latter did together with the "asset." Appellant then directed the policeman to proceed to the house of a certain Rolly Concepcion where he would then hand over the drug to Casino.[3]

With the help of the asset, the team proceeded to the house of Concepcion at Barrio San Joaquin, also in Pasig. There, the policemen once again conducted surveillance until 12:15 A.M. of the following day, May 24, 1990. At about this time, Casino went inside the compound of the Concepcion residence with the "asset" and some of the other policemen, and they were met shortly thereafter by appellant. When appellant asked Casino whether he had the purchase money, the latter gave a marked P100.00 bill, whereupon appellant handed over the "shabu" wrapped

in a small aluminum foil.[4]

After examining the contents of the foil and introducing himself as a policeman, Casino apprehended appellant and recovered from him the P100.00 bill. Appellant's other companions inside the compound, identified as Marissa Ortega, Gemini Concepcion and Joselito Martin, were likewise arrested by the operatives and some "shabu" paraphernalia were confiscated from the group. The police officers thereafter brought appellant and his companions to the Pasig Police Station where they were placed under detention.[5]

Appellant vehemently denies the accusation against him. He insists that he never sold any regulated or prohibited drug to Patrolman Casino, much less was there recovered from his person any "shabu" or marked money which would show that indeed the sale took place. Further, appellant asserts that he could not have been arrested at 12:15 A.M. on the 24th of May, 1990 since, together with his friends, he had earlier been apprehended at 11:00 P.M. of the previous day by Pat. Casino and his team and immediately detained at the Pasig Police Station.[6]

Appellant recalled at the witness stand that in the afternoon of May 23, 1990, he was fetched from his home by some friends to attend the birthday celebration of Rolly Concepcion at the Concepcion house in Barrio San Joaquin, Pasig. The group stayed there until 11:00 P.M., at about which time Pat. Casino and his team effected their arrest and subsequent detention at the Pasig Police Station. In support of appellant's testimony, the defense presented Marissa Ortega who amply corroborated Uson's version of the incident.[7]

Arraigned on June 28, 1990, appellant, with the assistance of counsel, entered a plea of not guilty.[8] Trial on the merits of the case thereafter commenced and on March 14, 1991, the same was submitted for decision by the trial court. [9]

On April 4, 1991, the court a quo rendered its verdict finding appellant guilty beyond reasonable doubt of the offense charged and accordingly imposed upon him the penalty of life imprisonment and a fine of P20,000.00. The trial court also directed its branch clerk to forward to the Dangerous Drugs Board the drug submitted in evidence for its proper disposition.[10]

In this appeal, appellant faults the trial court with having erred in (1) giving credence to the testimonies of the prosecution witnesses and disregarding those of the witnesses for the defense; (2) finding the accused guilty of the charge against him; and (3) admitting in evidence the "shabu" and marked money allegedly confiscated from appellant.[11]

We have carefully and exhaustively examined both the testimonial and documentary evidence of the prosecution and we are strongly convinced that it has failed to prove beyond peradventure of a doubt the guilt of herein appellant. Accordingly, we are constrained to sustain, albeit not without misgivings, his plea and submission of innocence.

Trite to the point of dogmatism, but entrenched as a fundamental and respected rule that we once again stress, is the mandate that the factual findings of a trial court should normally be accorded the highest degree of respect by appellate courts, said lower court having had the opportunity to observe intimately the manner by which the witnesses of the contending sides testified. In case of conviction, its findings thereon must generally be affirmed, absent any showing by clear and convincing proof that the said court has manifestly committed an error when it overlooked facts of crucial import in the testimonies of the prosecution witnesses.[12]

In the case at bar, Pat. Raul Casino's narration of the circumstances that led to the eventual entrapment of appellant is replete with significant inconsistencies and improbabilities as to render his testimony unworthy of merit and credence. Moreover, there are portions in his account in court of the whole incident which plainly collide with, and are contradictory of, his declarations in the sworn statement which he executed shortly after the

arrest of appellant.

According to Pat. Casino, a surveillance team was formed by their superior officer, Sgt. Gonzales, in the morning of May 23, 1990 immediately after they were informed by Cesar Esmeli that a pusher was selling his illicit wares at A. Santos Street in Barrio Buting, Pasig. They proceeded to the place pointed to by Esmeli and at around 4:00 P.M. of that day, Casino was introduced by an "asset" to the alleged peddler as a drug user. As appellant was not selling drugs at that time, they did not arrest him.[13]

Said police officer told the court that appellant requested him to return at 8:00 P.M. presumably for the transaction to be completed. However, on cross examination, Pat. Casino categorically testified that they allegedly saw appellant already selling the illicit drug at 4:00 P.M. or thereabouts, but to whom the sale was made Casino did not say.[14] If that were so, then the anti-narcotics operatives should have arrested appellant at that very instant but, strangely enough, they inexplicably failed to do so accordingly. Such an actuation on the part of Casino and his colleagues is odd and unbelievable, as any peace officer in his right mind would have wasted no time in pouncing upon appellant and placing him under the custody of the law.

As it is, and if Casino's testimony were to be believed, they still unnecessarily went through the tedious motions of planning a buy-bust operation and, in the process, it took them another eight hours thence to execute the eventual arrest of appellant. However, in a complete turnabout in answer to a succeeding question on cross-examination, Pat. Casino declared that as they had not chanced on appellant vending drugs at that particular time in the afternoon, they did not effect his arrest.[15]

Casino's account of the surveillance which they purportedly conducted at the Concepcion residence from 8:00 P.M. on May 23, 1990 up to 12:15 A.M. of the following day is likewise of dubious veracity. It will be noted that all three, Casino, appellant and Rolly Concepcion, were absolute strangers to one another. Accordingly, in the ordinary course of things, appellant would have provided instructions or information as to the address or location of Concepcion's house to Casino, who is himself a resident of another barangay, Malinao, in Pasig; or Casino, on his part, would have at least asked where to find Concepcion's house so as to lend the whole transaction a semblance of natural or normal spontaneity. Curiously, nothing of this sort transpired between appellant and Casino during their professed arrangements for consummating the deal.

When questioned as to how he managed to locate the Concepcion residence, Pat. Casino replied that he was then in the company of an "asset" who knew where to find Rolly Concepcion's place. Yet, when grilled as to the name of this "asset" who was with him all throughout that day, incredibly, he could not even remember the same.[16]

Moreover, considering that, as Casino himself said, there was already an agreement that appellant would deliver the "shabu" to Casino at Rolly Concepcion's house, there was, therefore, no further need for the buy-bust team to conduct another so-called surveillance for four long hours. Then, if he is to be believed, after going through four hours of spying, Casino, his other companions in the anti-narcotics squad and the "asset" then entered the compound for the rendezvous with appellant. As all the other members of the buy-bust team were likewise unfamiliar with appellant, it would have been more logical and credible for Casino to have posted himself outside the Concepcion compound, with his teammates strategically positioned at the sidelines, and called for appellant so as not to arouse any suspicion of an impending drug bust.

To make matters worse for the prosecution, Pat. Casino's prior version of the entrapment, as stated in his sworn statement, substantially contradicts his testimony in court. This calls to mind the doctrine that unexplained discrepancies between a previously executed sworn statement of a witness and his testimonial declarations regarding an appellant's participation in a crime erode the veracity of his account thereon.[17]

In said sworn statement which the prosecution adduced as evidence in court, Casino declared:

"T: Ano ang nangyari?

S: Sa aming pagmamanman at sa tulong ng isang informante napagalaman namin na itong si Jun Ponggi na ang tunay na pangalan ay Carlito Uson ay nagbebenta ng Shabu at Marijuana. Sa tulong na rin ng nasabing informante ako ay ipinakilala kay Jun Ponggi at ako po ay nagkunwang gumagamit ng shabu at gusto kong bumili ng isang daang piso.

T: Ano ang nangyari?

S: Matapos kaming makapagusap ni Ponggi bumalik kami sa upisina ng Anti-Narcotics unit at aking sinabi ang aming napagusapan kay P/Sgt. Rodolfo Gonzales na aming OIC na ako ay pagbibigyan ni Ponggi ng Shabu kaya kami nagplano ng isang buy-bust operation. Mga bandang alas 8:00 ng gabi ika-23 ng Mayo, 1990, ako kasama ko sina Pfc. Evangelista, Pat. Placido, Pat. Jorge Alombro at Pat. Raul Santiago pumunta ng Buting Barangay Hall para mag coordinate sa gagawin namin(g) buy-bust operation. Nakausap namin si Bobong Esmeli at ang kanyang mga kasamahan. Ako at ang isang informante ay nagtuloy sa A. Santos St., Buting at nakausap namin si Carlito Uson.

T: Matapos mong makausap si Carlito Uson, ano ang sumunod na pangyayari?

S: Sinabi niya sa akin na sumunod na lang ako sa bahay ni Rolly Concepcion sa Concepcion Compound (Aztec) sa San Joaquin, Pasig, MM at doon na lang niya iaabot sa akin ang Shabu. Matapos siyang makaalis ako kasama ang informante ay bumalik sa barangay hall at aking sinabi ang gusto ng pusher na si Carlito Uson. Ako kasama ang kasamahang kong pulis, si Bobong Esmeli pati na ang kanyang barangay tanod ay pumunta sa Concepcion Compound.

T: Ano pa ang nangyari?

S: Ako kasama ang informante ay pumasok sa compound at ang ibang kasamahan ko ay naiwan sa labas at nakatago.

Sinalubong kami ni Carlito Uson at sinabi sa akin na 'akin na ang pera mo, pare'. Iniabot ko ang Isang Daang Piso na marked money at iniabot naman niya sa akin ang isang deck ng Shabu. Tiningnan ko ang laman at ng masiguro na ito nga ay Shabu ay akin siyang hinuli matapos akong magpakilala na isang pulis. Sumenyas ako sa aking mga kasamahan na pumasok dahil sa nakita ko ang ilang tao sa loob ng bahay na nakabukas ang pinto na naghihithitan ng Shabu. Matapos kong masenyanan ang aking mga kasamahan hinuli nila ang mga taong naghihithitan ng Shabu matapos nilang magpakilalang mga pulis ng Anti-Narcotics." (Emphases ours).[18]

However, Pat. Casino had a different story to tell at the witness stand. According to the said officer's testimony in court, there was never an agreement that Casino would purchase only "shabu" from appellant. What was arrived at during the deal, Casino clearly stated, was that appellant agreed to sell not only "shabu" but marijuana as well, precisely because of Casino's wish to purchase both kinds of illicit drugs from appellant.[19]

Furthermore, the matter of the monetary consideration for the drug was never taken up during the meeting of appellant and Casino at 4:00 P.M. of May 23, 1990. They never discussed that Casino was to purchase P100.00 worth of "shabu" from appellant, as Casino would have this Court believe otherwise in his affidavit. As a matter of fact, when queried on cross-examination whether or not he and appellant had haggled over the price of the drug to be bought, Casino flatly answered in the negative.[20]

On top of all these, Casino admitted that he was not even sure as to the going price of the drug, so much so that when appellant supposedly asked him at the Concepcion compound whether he had money for the "shabu," he simply pulled out from his pocket the P100.00 bill and handed it over to appellant.[21] The circumstance that

Casino was unaware of the going price for "shabu" cannot but, once again, inspire surprise and disbelief. As a member of the Pasig Police Anti-Narcotics Unit and, therefore, an expert in matters relating to drug trafficking, Pat. Casino ought to have known the market value of the illicit drug on the streets.

In yet another series of damaging inconsistencies, Casino averred in his sworn statement that when they met again at 8:00 P.M. of the same day, appellant allegedly told him to follow the former to the Concepcion compound in San Joaquin, Pasig; that he and the "asset" then went back to the Buting barangay hall and narrated what the pusher wanted; and that, thereafter, both of them proceeded to San Joaquin in the company of Cesar Esmeli, a barangay tanod and the other policemen.

As earlier observed, Casino ostensibly relied on the information given by the "asset" in locating Rolly Concepcion's place since appellant had not provided details on where to find it. Further, Casino never stated before the trial court that he and the "asset" went back to the Buting barangay hall and then set out for San Joaquin with his teammates, Cesar Esmeli and a barangay tanod. However, contrarily, Casino related on the witness stand that, after he was told by appellant to join the latter at the Concepcion house, he and his companions proceeded there without Cesar Esmeli. He did not even mention that a barangay tanod went along with them that time.[22]

We are likewise seriously disturbed by Casino's statement in his affidavit that, after conducting surveillance until 12:15 A.M., he and the "asset" then entered the compound while all the other anti-narcotics agents waited in hiding outside the premises. This fact pointedly contradicts his testimony that some of his teammates had gone along with both of them, that is, Casino and the "asset," inside the compound of the Concepcions.[23]

The Court is aware of the principle that credence is ordinarily accorded to the testimonies of prosecution witnesses, more so where these consist of utterances of law enforcers who are presumed to have performed their duties regularly.[24] But, the rebuttable presumption that official duty has been regularly performed cannot by itself prevail against the constitutional presumption of innocence accorded an accused.[25] Moreover, in order that testimonial evidence may be believed, it should have come not only from the mouth of a credible witness but it should as well be credible, reasonable and in accord with human experience.[26]

Appellant's defenses of alibi and denial are admittedly weak, the same being easy of fabrication or concoction. There are nonetheless settled pronouncements of this Court to the effect that where an accused sets up alibi, or denial for that matter, as his line of defense, the courts should not at once look upon the same with wary eyes for, taken in the light of all the evidence on record, it may be sufficient to reverse the outcome of the case as found by the trial court and thereby rightly set him free again.[27]

Equally applicable is the well-entrenched rule that where the evidence for the prosecution is concededly as weak as that presented by the defense, the accused must be duly accorded the benefit of the doubt since the prosecution, in pressing its cause, must not rely on the weakness and frailty of the evidence for the defense but on the strength of its own in view of the constitutional presumption of innocence that an accused enjoys.[28]

As we held in *People vs. Honrada*, supra, "(c)ourts should not accept hook, line and sinker, the testimony of the alleged poseur-buyer that he was able to buy the prohibited drug from the accused. By the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroine can be planted in pockets or hands of unsuspecting provincial hicks and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. x x x Considering the gravity of the penalty for this offense, courts should be careful in receiving and believing the testimony of the alleged poseur-buyer, especially when none of his teammates were presented to corroborate his story." [29]

WHEREFORE, on reasonable doubt, the judgment appealed from is REVERSED and SET ASIDE and another one is hereby rendered ACQUITTING accused-appellant Carlito Uson y Esguerra of the offense charged. His immediate release from custody is accordingly ordered, unless he is otherwise detained for some other lawful cause.

SO ORDERED.

Narvasa, C.J., (Chairman), and Nocon, JJ., concur.
Padilla, J., on leave.

* When called to testify on the witness stand, appellant stated that his name is Carlito Uson, Jr. (TSN, February 5, 1991, 2).

[1] Original Record, 1.

[2] TSN, October 15, 1990, 9-10; Original Record, 58; Exhibit "G".

[3] TSN, October 15, 1990, 10-12.

[4] Ibid., id., 12-13.

[5] Ibid., id., 13-14.

[6] TSN, February 5, 1991, 26-27, 31.

[7] Ibid., id., 32-33; March 14, 1991, 36-40.

[8] Original Record, 3.

[9] Ibid., 51.

[10] Per Judge Apolonio R. Chavez, Jr.; Original Record, 67.

[11] Appellant's Brief, 1; Rollo, 34.

[12] People vs. Acuram, 209 SCRA 281 (1991); People vs. Diaz, 212 SCRA 147 (1992); People vs. Molina, et al., 213 SCRA 52 (1992).

[13] TSN, October 23, 1990, 3.

[14] Ibid., id., 2-3.

[15] Ibid., id., 3.

[16] Ibid., id., 4.

[17] People vs. Tulagan, et al., 143 SCRA 107 (1986); People vs. Casim, 213 SCRA 390 (1992).

[18] Original Record, 58-59; Exhibits "G" to "G-1".

[19] TSN, October 15, 1990, 11.

[20] Ibid., October 23, 1990, 4.

[21] Ibid., id., 4.

[22] TSN, October 15, 1990, 12-13, 17.

[23] Ibid., id., 13.

[24] People vs. Padilla, et al., 213 SCRA 631 (1992); People vs. Segwaben, 194 SCRA 239 (1991).

[25] People vs. Honrada, 204 SCRA 858 (1991).

[26] People vs. Lim, 190 SCRA 706 (1990).

[27] People vs. Castelo, 133 SCRA 667 (1984); People vs. Jalon, G.R. No. 93729, November 13, 1992.

[28] People vs. Mendoza, 203 SCRA 148 (1992).

[29] See also People vs. Ale, 145 SCRA 50 (1986).

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