

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO PASTORES Y AVILA, DEFENDANT-APPELLANT.

G.R. No. 104731. October 27, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

This is an appeal from the decision of the trial court finding appellant Renato Pastores y Avila guilty beyond reasonable doubt of selling “shabu”.

Renato Pastores was prosecuted for violation of R.A. No. 6425, the Dangerous Drugs Act of 1972. The criminal information alleged:

“That on or about the 30th day of July, 1991, in Quezon City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did, then and there wilfully, unlawfully and feloniously sell, deliver and give away .65 gram of methamphetamine hydrochloride (shabu), a regulated drug, worth P600.00, Philippine Currency, to one Sgt. Cresendo Molina, who acted as poseur-buyer, in violation of the aforesaid law.

Contrary to law.”[1]

Appellant on arraignment entered a plea of not guilty, and the case proceeded to trial.

On 28 January 1992, the trial court convicted the accused and sentenced him as follows:

“Wherefore, finding the accused RENATO PASTORES Y AVILA guilty beyond reasonable doubt of the crime charged, as defined and penalized under Section 15, Article III, Republic Act 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by PD 1683, he is hereby sentenced to suffer life imprisonment and to pay a fine of P20,000.00 without subsidiary imprisonment in case of insolvency, plus costs.

So Ordered.”[2]

Appellant, in his brief,[3] ascribed the following errors to the trial court:

1. The court a quo erred in convicting the accused on the basis of doubtful evidence.
2. The court a quo erred in rejecting the evidence of the defense on the basis of speculation.
3. The court a quo erred in giving more weight to the disputable presumption of regularity in the performance of official duty than the constitutional presumption of innocence.
4. The court a quo erred in not acquitting the accused on the basis of reasonable doubt.

The evidence of the prosecution consisted principally of the testimonies of four (4) witnesses, namely: (1) P/Sgt. Cresendo Molina, (2) P/Sgt. Rodrigo Ventura, (3) P/Cpl. Jaime Amor and (4) P/Lt. Elizabeth Ayonon. A plastic bag containing “shabu”, and six (6) marked one hundred peso (P100) bills allegedly seized from the accused, were offered in evidence. P/Lt. Ayonon was the forensic chemist who conducted the laboratory examination of

the bag of “shabu” here involved.

The testimonies of the four witnesses for the prosecution were summarized by the trial court, as follows:

“P/Cpl Jaime Amor (Cpl. Amor, for short), Sgt. Cresendo Molina (Sgt. Molina, for short) and Sgt. Rodrigo Ventura (Sgt. Ventura, for short) are (sic) assigned to the Special Task Force Unit, Quezon City Anti-Drug Abuse Council, Office of the Vice Mayor, Quezon City Hall. On complaints received by said office which were listed in a logbook, that a certain “Rey” Pastores (“Rey”, for short) has been selling prohibited drugs in La Loma, a surveillance was conducted by them. On July 30, 1991 at about 4:00 o’clock in the afternoon, a confidential informant called the Quezon City Anti-Drug Abuse Council, with the information that “Rey” has been peddling “shabu”. Sgt. Molina, Sgt. Ventura, Cpl Amor and their Officer-in-charge Fernando M. Vinculado (Vinculado, for short) set up a buy-bust operation at the corner of Iba and Cuenco streets, La Loma, Quezon City. Sgt. Molina was designated as the poseur-buyer and was given six P100.00 bills which he receipted for and on which he affixed his initial under the logo of the Central Bank (Exhibits D, D-1 to D-6). Thereafter, Sgt. Molina contacted the confidential informant for the latter to arrange the sale with “Rey”. At about 6:00 o’clock in the evening of that same day, Sgt. Molina, Sgt. Ventura and a certain Sgt. Malipayon proceeded to the area of operation at the corner of Iba and Cuenco streets. Sgt. Molina parked his car at Cuenco street about 6 meters from the corner and alighted leaving Sgt. Ventura and Sgt. Malipayon inside to wait for the pre-arranged signal which was the scratching or touching of Molina’s head. “Rey” arrived in a red Ford Cortina car at about 7:00 o’clock in the evening. He parked along Iba Street near the corner. He alighted and talked with the confidential informer near the corner of Iba and Cuenco streets. Sgt. Molina was about 10 meters away. Then the confidential informant called Sgt. Molina and introduced him to “Rey” as a friend and buyer. Sgt. Molina told “Rey” that he has P600. “Rey” went to his car. When he returned to Sgt. Molina, “Rey” handed a plastic bag containing white crystalline powder suspected for methamphetamine hydrochloride popularly known as “shabu” (shabu, for short). Sgt. Molina in turn handed the six marked P100.00 bills to “Rey”, who received it, then Sgt. Molina scratched his head. Thereupon, Sgt. Ventura and Sgt. Malipayon rushed to them and pounced on the suspect. As they were boarding “Rey” in the car of Molina, Sgt. Amor arrived. Sgt. Ventura drove the car of Molina while Molina drove the car of the accused and they all proceeded to Quezon City Hall. The six marked P100.00 bill were recovered from “Rey’s” pocket. Sgt. Molina turned him over to Sgt. Amor for interrogation together with the plastic bag containing suspected “shabu” (Exhibit G) and the six marked P100.00 bills (Exhibit D-1 to D-6). Sgt. Ventura conducted a search on the car of “Rey” but did not find anything. During the interrogation “Rey” gave his true name as Renato Pastores but refused to give his statement. Sgts. Molina and Ventura gave their written statements (Exhibits A, A-1, B, B-1). On the following day Sgt. Amor turned over the plastic bag containing suspected “shabu” and the letter request for laboratory examination signed by Vinculado, addressed to the chief, PNP Crime Laboratory Service, Camp Crame (Exhibits C, c-1, H-2, H-3). Laboratory examination was conducted by Forensic Chemist P/Lt. Elizabeth L. Ayonon on the contents of the plastic bag and was found positive for 0.65 gram of Methamphetamine Hydrochloride, a regulated drug (Exhibits E, H). In a referral letter, the matter was referred to the Quezon City Prosecutors Office for proper disposition (Exhibit F). Sgts. Molina and Ventura drew and sketched the buy-bust area (Exhibits I, J).”[4]

The accused-appellant presented another version of the facts leading to his arrest on 30 July 1991 which was summarized by the trial court as follows:

“... On July 30, 1991 at about 6:00 o’clock in the evening, accused left his house to go to his sister-in-law at Mariveles street to borrow money for the registration of his wife’s car (Exhibits 13, 14, 17, 17-a to 17-c) in addition to the P400.00 which he had in his pocket then. His sister-in-law gave him P2,940.00. Thereafter, he went to the house of John Corpus also at Mariveles street and chanced upon Rafael and Dindo Antonio who arrived there earlier. They talked about the fighting cock that they will use in the San Juan Derby. After about 30 minutes accused left but when he was at Cuenco Street he remembered that he forgot to relay to his sister-in-law his wife’s message for his sister-in-law. Instead of turning back he decided to park his car in front

of Iba and Cuenco Streets and just walk back to his sister-in-law's house which was about 20 meters away. Before he could step out of the car, a red Toyota car blocked his car in front; another vehicle parked right on accused car's side and another vehicle, a Ford Fiera at the back. Armed men, among them, Sgts. Molina and Ventura, alighted. Sgts. Ventura and Molina poked a gun at him and forced him to step out of the car. Accused followed and was ordered to place his hands on top of his car while Sgt. Molina searched his body but did not find anything. They dragged him and boarded him at the back seat of Sgt. Molina's car. This incident was allegedly witnessed by Layag and de la Pasion who executed their affidavits (Exhibits 8, 8-A, 9, 10, 10-a).

Sgt. Molina took the accused's Citizen diver's watch worth P6,000.00. His car was driven by Sgt. Molina while Molina's car was driven by Sgt. Ventura. He sat at the back with Sgt. Ventura and Cpl. Amor. While inside the car Cpl. Amor took the P400.00 from the accused's pocket. They proceeded to the SOU, NARCOM, Camp Crame. Msgt. Jose C. Pedrosa was there. While at said office, Sgt. Molina ordered him to undress and took the P2,940.00 which he borrowed from his sister-in-law. Sgt. Molina asked him where he was hiding the "shabu". Thereafter he was directed to dress up and board the back seat of Sgt. Molina's car. MSgt. Pedrosa, Sgts. Molina and Ventura likewise boarded the car. They proceeded to the police headquarters at EDSA where Sgt. Molina dropped off. Then they drove to the gasoline station at Timog. After 15 minutes Sgt. Molina arrived and accused was directed to remove his T-Shirt, handcuffed and blindfolded with his T-shirt which the police officers tore. The car moved and he heard someone asking where they will throw him. Accused pleaded to them not (sic) do it because he is innocent. They stopped for a while and Vinculado arrived and the accused was transferred to another vehicle. They proceeded to Camp Crame. His blindfold was removed in Camp Crame and he was brought to Vinculado. Vinculado asked him if he knew Bebot Remolacio and Gary Sugid but when he answered no he was blindfolded again and maltreated for more than more or less one hour. He sustained injuries but was not brought to a doctor despite his request. He was detained at the NIU detention cell for 2 months."^[5]

The version of the accused, with respect to the circumstances leading to his arrest by the special task force, was corroborated by Mrs. Salud Layag and Mr. Danilo de la Pasion.

Mrs. Layag testified that at about 7:00 in the evening of 30 July 1991 she saw the accused about to park his car in front of her sari-sari store. She noticed three vehicles quickly close-in on accused's car. Plainclothesmen with long and short firearms alighted from these vehicles. Two armed men on board the red car which led the pack of vehicles directed appellant to step out of the car and raise his arms behind his head. These men bodily searched appellant. Mrs. Layag was about three (3) meters away from the accused and the men who searched appellant. After the precipitate search, accused was placed on board the red car and the team drove away.

Danilo de la Pasion testified that he was relaxing on a bench of Mrs. Layag's store some four (4) meters away from accused's car when a red Toyota cut across the path of the accused and two (2) other vehicles hemmed in closely behind accused's car. De la Pasion declared that two (2) armed men from the red Toyota went over to accused who was seated inside the car and without any companion. The accused stepped out of his vehicle upon orders of the two (2) men. De la Pasion noticed that these men were searching for something. De la Pasion declared that he could clearly see the faces of the men who searched accused and the car because of the bright fluorescent light of Mrs. Layag's store that night. After the search, the accused was placed on board the red Toyota. One of the two (2) armed men drove accused's car and the team of four (4) cars sped away.

Clearly, there is here an irreconcilable conflict between the testimonies of the police officers, on the one hand, and the statements given on the witness stand by the accused, Mrs. Layag and Mr. Pasion, on the other. The trial judge, who had the opportunity to observe the detailed demeanor of all witnesses and to listen to their respective testimonies, gave "full faith and credit" to the declarations made by the prosecution witnesses. The narration given by law enforcers outweighed that of the witnesses for the defense because, according to the trial court, the witnesses for the prosecution were Narcom agents presumed to have regularly performed their duties while

accused-appellant was a notorious drug pusher. The trial judge concluded that the defense of extortion was the accused's attempt to taint with illicit motives the acts of on the Narcom agents.[6]

This Court, ordinarily, would rely upon the settled principle that "findings of the trial court on the issue of credibility of witnesses and their testimonies are entitled to great respect and accorded the highest consideration by appellate courts." [7] There are of course well-recognized exceptions. When (1) the conclusion was a finding grounded entirely on speculations, surmises and conjectures; or, (2) the inference drawn was manifestly mistaken, absurd or impossible; or, (3) there was grave abuse of discretion; or (4) the judgment was based on a misapprehension of facts; or (5) the court, in making its findings, went beyond the issues of the case and the same are contrary to the admissions of both appellant and the appellee, the Court has not hesitated to disregard the trial court's rulings on questions of fact.[8]

We have carefully scrutinized the evidence on record and it appears to us that there was some misapprehension of facts in this case and either a deriving of inferences from the facts which are manifestly mistaken or a failure to draw reasonable inferences from the facts shown on the record.

Firstly, the Court notes that the testimonies, both oral and documentary, of the prosecution's witnesses were replete with inaccuracies and inconsistencies which engender serious doubts as to the veracity of the Narcom agents' narration of the circumstances leading to the arrest of the accused.

Sgts. Molina and Ventura, as well as Cpl. Amor, testified that the accused was arrested during a buy-bust operation carefully planned by their Officer-in-charge, Capt. Vinculado. During the supposed planning meeting, these witnesses were present and were assigned specific tasks. Sgt. Molina was designated as poseur-buyer while Sgt. Ventura and Cpl. Amor were directed to provide the necessary back-up. The team used two cars: Sgt. Molina, Sgt. Ventura and Sgt. Malipayon were on board one, while Cpl. Amor and his driver were in the other.[9] Yet, the responses elicited from the three witnesses at the witness stand reveal that Cpl. Amor was not present during the actual operation. In fact, he arrived only after the accused had been apprehended and he proceeded to the premises for the purpose of conducting an investigation of the circumstances leading to the arrest of the accused.

Sgt. Molina, the poseur-buyer, appeared uncertain about several aspects of the transaction between himself and the accused. In his sworn affidavit, marked and offered in evidence as Exhibit "A" [10] and executed on the night of the buy-bust operation, he declared that he handed the marked bills to the accused before the bag of white powder was delivered to him. On direct examination in open court, he testified that he delivered the marked money after the bag was handed to him by the accused.[11] The defense counsel pointed out to Sgt. Molina the apparent discrepancy between the statements contained in Exhibit "A" and those made on the witness stand. Sgt. Molina agreed with the defense counsel that his (Molina's) memory was accurate at the time he executed his affidavit. Yet when Fiscal Gabriel, in the latter's attempt to re-instate the credibility of the witness, asked Sgt. Molina on re-direct examination which of his statements -- those contained in his affidavit and those made on the witness stand -- were true and correct, Sgt. Molina declared that his statement on the stand was the true and correct narration of the events. His testimony was recorded as follows:

"Prosecutor Gabriel to Sgt. Molina on direct examination:

Q: Which is true, which truth do you want the Court to understand, that which is placed in your affidavit, or that which you testified the last time around?

A: Sir, in my affidavit sir.

Q: You are retracting again what you said in open court?

A: What was the question before?

Court to the interpreter:

You translate for the second time, or third time.

A: No sir, the one I am testifying here in Court is the truth.” (Underscoring supplied)

Later, however, Sgt. Ventura, who was allegedly just a few meters away from the supposed negotiation and whose testimony was offered to corroborate the testimony of Sgt. Molina, contradicted the testimony of the supposed poseur-buyer Sgt. Molina. The testimony on direct examination of Sgt. Ventura, in pertinent part, follows[12]:

Prosecutor Gabriel:

“Q: When the accused talked to Sgt. Molina, what happened next?

A: I saw Sgt. Molina gave (sic) something to the suspect which I am very sure that it was the buy-bust money. Binonot niya po sa bulsa niya ‘yong pera. He was taking out the money from his pocket.

Q: After Sgt. Molina drew the money from his pocket, what happened?

A: He gave it to the suspect.

Q: After he gave the money to the suspect, what next transpired?

A: The suspect went back to his car and got something from the compartment and returned to Molina.

Q: After that what happened?

A: I saw him gave a transparent plastic bag to Molina.

Q: How far were you from Molina and the accused at the time that was happening?

A: Just near, sir, about seven to 10 meters.” (Underscoring supplied)

Sgt. Molina also gave conflicting accounts of incidents which allegedly transpired prior to his encounter with accused-appellant. Sgt. Molina, during his direct examination, outlined the relevant events: first, a tip from an informer was phoned-in; then, the operation was mapped out by Capt. Vinculado; thereafter, the “asset” (i.e., informer) was again contacted by phone to set-up a meeting between accused and Sgt. Molina. The following testimony of Sgt. Molina is pertinent:

Prosecutor Gabriel to Sgt. Molina on direct-examination:

“Q: About 5:00 o’clock in the afternoon of that day, do you remember of anything to which your attention was called?

A: Yes, sir.

Q: What was that?

A: When our confidential informant called us in our office that a certain alias Rey Pastores was engaged in the delivery of metamphetamine chloride, commonly known as shabu.”[13]

x x x x x x x x

Q: What did you do when he revealed that information?

A: I asked (sic) my commanding officer Capt. Fernando Vinculado that one alias Rey Pastores was selling shabu and delivering metamphetamine hydrochloride.

Q: And what was the reaction of your superior?

A: He set a buy-bust operation, along corner Iba and Cuenco Streets, Laloma.

x x x x x x x x

Q: Now what actually was the pattern set forth by the buy-bust operation?

A: I was designated as poseur-buyer, by our commanding officer.

Q: And being designated as poseur-buyer, what was your designated mode of action or activity? What were you supposed to do as poseur-buyer?

A: To receive the money and contact again the confidential informant.[14]

x x x x x x x x

Q: After receiving the six one hundred peso bills from Capt. Vinculado, what did you do?

A: We set the operation, sir.

Q: How did you set it up?

A: I was to act as poseur-buyer. We contacted the confidential informant to set-up the buy-bust operation.

Q: What time was the buy-bust operation set-up?

A: At around past 6:00 o'clock.

Q: I see. How were you able to contact your confidential informant?

A: Through telephone sir.[15]

Yet, on cross-examination, Sgt. Molina recalled that their informant had tipped them off about the illegal activities of the accused, and had informed the Narcom agents that a meeting had been arranged between accused and Sgt. Molina. Sgt. Molina said on cross-examination:

“Atty. Crecini to Sgt. Molina on cross-examination:

Q: And so, how were you able or from whom were you able to obtain the information that the supposed sale between you, pretending to be the buyer, and the accused, would take place at 7:30 in the evening of that date?

A: My informant, sir.

Q: So, after calling you at 4:00 o'clock are you saying that he called you again?

A: No, sir. He did not call me up again.

Q: Are you saying that when he called you at 4:00 o'clock, July 30, 1991, he already told you that he has made an appointment to meet with the accused at 7:30 in that evening?

A: Yes, sir.

Q: Are you very sure about it?

A: Yes, sir.”[16] (Underscoring supplied)

There are other gaps and inconsistencies in the testimonies of the prosecution witnesses relating to the buy-bust operation that Narcom agents claimed to have planned and executed. Notably, for instance, the prosecution witnesses could not agree on whether or not, or by whom, the car driven by appellant Pastures was searched by

the police for drugs or other contraband items. The extraordinary testimony of the prosecution witnesses on this point is summarized by the defense in the following terms:

“Cpl. Amor testified that he did not search the car driven by appellant because he was told by Sgts. Molina and Ventura that they already searched it and found nothing inside (t.s.n., October 7, 1991, pp. 28-30). Sgt. Molina, however, said that he never searched the appellant’s car either at the site of the operation or at their office at City Hall (t.s.n., October 15, 1991, pp. 25-26). Sgt. Ventura gave an entirely opposing version. He said that at the scene of the operation, they did not search the car of the accused, but when they reached their headquarters, he, Sgt. Molina and Cpl. Amor searched the car! (t.s.n., October 21, 1991, pp. 49-50).”[17] (Underscoring supplied)

Even the very composition of the police team sent to carry out the operation, and the participation of each member, became the subject of murky and inconsistent testimony from the police witnesses which has been summarized by appellant’s counsel as follows:

“x x x [Sgt. Molina] has never satisfactorily explained why in his affidavit (Exhibit ‘A’), he placed Cpl. Amor as a member of the back-up team when he (and Sgt. Ventura) knew only too well that the other member was Agent Malipayo, not Cpl. Amor. The versions of these three as to the presence of Cpl. Amor at Iba Street are at head-on collisions. Cpl. Amor said that he proceeded to Iba Street because Sgts. Molina and Ventura called him at their office and that was after appellant had been arrested (October 7, 1991, p. 20).

For his part, Sgt. Molina said that he was surprised when he saw Cpl. Amor arrive at the scene of the buy-bust operation because Cpl. Amor, as investigator, was supposed to be on duty in their office at City Hall awaiting the outcome of their operation. He said he never told Cpl. Amor to join them there at Iba Street either before or after the operation (October 15, 1991, pp. 23-24).

Sgt. Ventura gave a different account. He said that Cpl. Amor was supposed to be with him as back-up but Cpl. Amor was just delayed along the way (October 21, 1991, p. 26). But in answer to the question of the court, Sgt. Ventura said that when they went to the place of the buy-bust operation, he was with Sgt. Molina and Malipayon in one car, and in the other, Cpl. Amor and his driver (Id., p. 27). Asked by Pros. Gabriel what was the participation of Cpl. Amor in the buy-bust operation, Sgt. Ventura admitted that Cpl. Amor arrived after the arrest of the appellant (Id., pp. 38, 51). Sgt. Ventura categorically denied having called Cpl. Amor by telephone to follow them at the area of operation (Id., p. 51).”[18] (Underscoring supplied)

We must note that the Office of the Solicitor General failed to address and reconcile the inconsistencies in the testimonies of the prosecution witnesses which appellant’s counsel had underscored.[19]

Generally, we have declared that minor inconsistencies in the testimony of witnesses do not affect their credibility.[20] In the case at bar, however, as pointed out by counsel de parte of appellant, the inaccuracies do not, in the aggregate, just refer to collateral matters. Each individual inconsistency or inaccuracy pointed out by appellant’s counsel might, if considered by itself, not appear serious; when, however, these inconsistencies and inaccuracies are viewed in their totality, they appear to the Court substantially to erode the credibility of the Narcom officers and raise a not insubstantial doubt as to the veracity of the prosecution’s theory that the accused had in fact been arrested as a result of a buy-bust operation.[21] The doubt which has been generated in our mind relates, not to whether the accused had been arrested, but to whether or not a buy-bust operation had indeed been mounted and carried out and the accused’s arrest effected in the course of such operation. It is very difficult for the Court to understand why, if a buy-bust operation had indeed been planned and executed by the Narcom officers, an operation which does not seem unusually complex and difficult, the testimonies of the Narcom officers about that operation and the modality thereof should not have been more forthright and specific and consistent with each other in relevant detail.

Secondly, we do not agree with the trial court's conclusion that sufficient evidence had been adduced establishing accused's notoriety as a drug pusher. Sgt. Molina's bare testimony is not sufficient to establish the charge that the accused had regularly peddled or traded "shabu" along Iba and Cuenco Streets, La Loma, Quezon City.[22] Neither does an allegation by Sgt. Molina that accused's name was included in the Order of Battle, a police logbook said to contain the names of notorious drug pushers, sufficiently prove that accused had in fact been involved in illegal activities. The surveillance supposedly conducted by Narcom agents had apparently been carried out in such a relaxed and casual manner as to render the state's witnesses unable to answer elementary questions about the accused, much less questions concerning the extent of the drug trade going-on in Iba and Cuenco Streets. The testimony of Sgt. Molina as to the nature and extent of the surveillance said to have been carried out prior to appellant's arrest, was as follows:

"Fiscal Gabriel to Sgt. Molina on direct examination:

Q: In this statement Exhibit A, you stated among other things that you conducted surveillance over the accused before the buy-bust operation. Why was it necessary for you to conduct a surveillance?

A: Because of the many reports to us, sir, about him.

Q: How long did you place him under surveillance before the buy-bust operation?

A: More or less, one (1) month, sir.[23]

x x x x x x x x

Atty. Crescini to Sgt. Molina on cross examination:

Q: During the one month surveillance that you conducted, you (sic) were never able to determine or find out where the accused was living?

A: No, sir.

Q: Did you exert effort to locate where the accused was living considering that there were many complaints against him? did you exert efforts?

A: We exerted efforts, sir.

Q: What effort did you exert?

A: To find out those who know him.

Q: All right. You received numerous complaints. Were you able to determine the identities of these complainants to verify the truth of their complaints?

A: No sir. It was reported through the telephone.

Q: So these complaints were anonymous telephone calls?

A: Yes, sir.

Q: There was never anyone who gave his name to you so that you could verify how true or how false the complaint was?

A: No, sir. Nobody gave a name. That is why we conducted a surveillance.

Q: Very good. What did the surveillance consist of. Did you go to that area of Iba and Cuenco street to make inquiries about these alleged activities of the accused?

A: Yes, sir. I went there twice.

Q: Did you talk to anyone who provided you with positive information?

A: Yes, sir, a certain Rudy.

Q: What is the full name of Rudy?

A: Hindi ko po maano.

Q: What do you mean “hindi maano”?

A: I do not know the full name.

Q: But you talked to him?

A: Yes, sir.

Q: Did you ask him what is his full name?

A: No, sir.

Q: Did you not ask him where he lives?

A: I asked him, sir.

Q: Did he give you his address? his exact address?

A: No, sir.

Q: I am asking whether Rudy gave you his address?

A: Yes, I asked him.

Q: Did he refuse to give you?

A: No, sir. He did not refuse to give his address, but he just told me that he is from that place.

Q: And you were satisfied with listening to the story of this Rudy whose address you did not even bother to find out?

A: No, sir.

Q: All right. If you were not satisfied with the statement of Rudy did you obtain additional information to satisfy you?

A: Yes, sir.

Q: Who else did you interview from that place? name (sic) names if you can.

A: I cannot remember anymore, sir.”²³ (Underscoring supplied)

The amount of “shabu” allegedly confiscated from appellant at the time of the bust detracts from the trial court’s conclusion that accused was a notorious drug pusher. We note that the anonymous informant had advised the Narcom operatives that heavy drug trafficking was going-on in Iba and Cuenco Streets. Yet, only a fraction of a gram was confiscated from accused. No other substance was found in the vehicle driven by the accused.

Thirdly, the testimony of accused was corroborated by two disinterested witnesses. As earlier noted, the trial court seriously doubted the credibility of the defense witnesses because their testimonies were apparently in conflict

with respect to the precise actual positions of the vehicles that boxed-in accused's car.[24] We do not understand why such an inaccuracy should have completely destroyed the credibility of the witnesses for the defense. The judge should have simply subjected their testimonies, specially that of Mrs. Salud Layag and Mr. Danilo de la Pasion, to the ordinary processes of evaluation and accordingly assigned to such testimony the weight and probative value called for.

The testimony of accused, as corroborated by Salud Layag and Danilo de la Pasion, was to the effect that no buy-bust operation had in fact been conducted. The accused had just pulled over to the corner of the street and was about to alight from his car when three (3) vehicles came and boxed his car in between; he was forthwith arrested. The character of the accused may not be unblemished. He admitted using "shabu" before. His chosen occupation may not be admirable either. He admitted that he was engaged in loaning large sums of money to gamblers. But these circumstances, by themselves, do not disqualify accused-appellant as a competent witness. Moreover, his testimony, independently of his bad or good moral character, was not inherently improbable. The trial court had no adequate basis for concluding that the testimonial evidence of appellant was "absurd, illogical and incredible." [25]

We are also concerned over the perfunctory way the trial court disregarded appellant's charges of maltreatment. The accused, during the preliminary investigation conducted upon his request, filed counter charges against the Narcom agents for grave threats, grave coercion, robbery and perjury.[26] During the trial of the case, the accused gave a straightforward and detailed account of his experiences while in the custody of his captors for more than two (2) months.[27] The trial court completely ignored the testimony of the accused, saying only that if the Narcom agents had maltreated the accused, the latter should have sought the help of his wife and his father who was also a police officer.[28] We do not see any necessary relationship between failure to seek assistance from one's relative and a finding that there was no maltreatment of a detainee by the detaining officers. Clearly, the inference reached by the trial judge was not sufficiently grounded on facts established during the trial.

Finally, we are aware that "frame-up" is a common defense in drug and other cases.³⁰ Frame-up, like alibi, may be a weak defense that is easily alleged.³¹ The accused in the case at bar stated that he had been subjected to harassment and extortion on at least two (2) previous occasions at the hands of police officers despite his innocence. Accused was, in other words, asserting that in the instant case he had been arrested, charged and jailed because he was unable to comply with extortionate demands of police officers. What is remarkable here is that the accused's testimony to this effect, as well as to the effect that he had been divested of cash and personal property he had with him at the time of his arrest, was very specific and concrete: names; dates; the values of particular personal property; and amounts demanded from and given by him to police officers, were specified. As summarized by the trial court, the testimony of appellant on these matters was as follows:

"Accused testified that Cpl. Amor robbed him of P400.00 cash and Sgt. Molina his diver's watch worth P6,000.00 and P2,940.00 cash which he borrowed from his sister-in-law for the registration of his wife's car. He claimed that he is a casino financier with a capital of up to a million and thereabout and that he lends money to casino gamblers from P50,000.00 to P100,000.00 with cars and checks as collateral. He has been in the business since 1985 until July 30, 1991 but at the time of the arrest he had no money. He cried (sic) to explain his seemingly pathetic financial state by saying that he had just lent P100,000.00 in May, 1991 to Mandy Antonio with the agreement that he shall pay him before Christmas of 1991 at 2% a day interest. Mandy Antonio is bankrupt, has a recruiting agency, and has gone to Japan but accused lent the money to him just the same without collateral because he simply trusted him. Unfortunately, Mandy Antonio has not paid him.

x x x x x x x x

Accused testified that there were previous occasions when he was apprehended because of 'shabu.' The first was in 1988 when Lt. Jimmy Carbonell, Pat. Basco and Patrolman San Jose entered his house to arrest him for possession of 'shabu' but the arrest was not pursued because he gave them P101,000.00. The second occasion was on February 23, 1991 when Lt. Rey Arceo, Cpl. James Baldomera and many others arrested him at the corner of Luna St. and Tacio Street also because of 'shabu' but they did not file a case against him because he gave them P30,000.00. The third occasion happened on April 10, 1991 when he was arrested by Sgt. Jack Jacinto, Cpl. Caballes Arturo, Amy Yerro and Sgt. Quitariano. This time he did not give any money because his father P/Col. Alfredo Pastores intervened by talking with General San Diego. His father and General San Diego allegedly agreed that the accused was not released and instead a case was filed in court which is still pending before Judge Tirso D.C. Velasco. He claims that he is not guilty in all cases. He cannot give money anymore because he does not have any since his money worth P300,000.00 was lent to Mandy Antonio, a friend, who went to Japan and has not paid him yet. He executed a counter-affidavit (Exhibit 15). He found later that his wife's car was divested of its stereo, amplifiers, 4 speakers, spare tires, antenna, one pack of blue seal cigarette, Bally shoes and 35 pieces of cassette tapes. x x x."32

Again, appellant's testimony on the above matters might not, by itself, suffice to tilt the balance of proof in his favor; the prosecution did not try to rebut appellant's detailed testimony, and the trial court airily waived away appellant's statements about having been robbed and about the extortion sought to be exercised on him. But his above testimony must be considered in conjunction with the weakness of the evidence given by the prosecution's witnesses previously discussed. Upon the one hand, appellant's defense of frame-up tends to reinforce the doubt already engendered by the weaknesses of the prosecution's evidence about the supposed buy-bust operation; upon the other hand, it was not indispensably necessary to inquire into the truthfulness of appellant's allegations concerning frame-up and extortion where, as in this case, the evidence of the prosecution is weak.³³ It was incumbent upon the prosecution to demonstrate accused's culpability beyond reasonable doubt. Independently of whatever defense has been offered by the accused, the evidence of the prosecution must survive the test of moral certainty. Conviction must rest on the strength of the prosecution's evidence, not merely on the presumption of regularity of performance of official duty, and certainly not on the weakness of the accused's defense; otherwise, the constitutional presumption of innocence will be reduced to a conspicuous futility.

In the light of the facts and circumstances on record, the Court finds that the evidence adduced by the prosecution was insufficient to support accused's culpability. The presumption of regularity of the performance of the official duty does not by itself overcome the presumption of innocence to which accused is entitled. The prosecution has failed to discharge its burden of proving accused's guilt beyond reasonable doubt; the Court's mind and conscience remain vexed and uneasy.

WHEREFORE, for failure of proof beyond reasonable doubt of his guilt, the accused Renato Pastores is hereby ACQUITTED of the crime charged. The decision of the trial court dated 28 January 1992 is hereby REVERSED. Costs de officio.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Rollo, p. 6; 3 Records, p. 1.

[2] Id., p. 32; Certified Xerox Copy of the decision dated 28 January 1992 is attached to Appellant's Brief, p. 46.

[3] Id., p. 46

[4] Id., pp. 20-23; see also Certified Xerox Copy of the Decision in Appellant's Brief, p. 46.

- [5] Brief for the Accused-Appellant, pp. 9-12 ; Rollo, p. 46.
- [6] See Decision dated 28 January 1992; Records, p. 46.
- [7] See *People vs. Gerones*, 193 SCRA 263 (1991); *People vs. Natan*, 193 SCRA 355 (1991); *People vs. Umali*, 193 SCRA 493 (1991); *Concepcion vs. CA*, 193 SCRA 586 (1991); *People vs. Martinada*, 194 SCRA 36 (1991); *People vs. Arenas*, 198 SCRA 172 (1991).
- [8] *People vs. Deocariza*, G.R. No. 103396, 3 March 1993; *People vs. Salcedo*, 195 SCRA 345 (1991); *People vs. Yutuc*, 188 SCRA 1 (1990); *People vs. Taruc*, 157 SCRA 182 (1988); *Arcado Cortes y Vengson vs. Court of Appeals and People*, 163 SCRA 139 (1988).
- [9] See TSN, 7 October 1991; 1 Records, p. 32. TSN, 21 October 1991, p. 27; Records, p. 129; TSN, 15 October 1991, p. 7, Records, p. 68.
- [10] See 2 Records, p. 1.
- [11] TSN, 15 October 1991, p. 13; Records, p. 74.
- [12] TSN, 21 October 1991, p. 32; 1 Records, p. 134.
- [13] TSN, 15 October 1991, p. 6; Records, p. 67.
- [14] *Id.*, p. 7; Records, p. 68.
- [15] *Id.*, p. 9; Records, p. 70.
- [16] TSN, 21 October 1991, p. 3; Records, p. 106.
- [17] Brief for the Accused-Appellant, p. 20.
- [18] *Id.*, pp. 21-22.
- [19] Appellee's Brief, Rollo. p. 57.
- [20] See *People vs. Barba*, 203 SCRA 436 (1991); *People vs. Bragaes*, 203 SCRA 555 (1991).
- [21] See also *People vs. Remorosa*, 200 SCRA 350 (1991); *People vs. Lim*, 196 SCRA 809 (1991).
- [22] See Testimony of Sgt. Molina, TSN, 15 October 1991, p. 6; Records, p. 67.
- [23] TSN, 15 October 1991, p. 17; Records, p. 78.
- 23 TSN, 15 October 1991, p. 34; Records, p. 95.
- [24] See Decision, pp. 28, 29; Records, p. 46.
- [25] Brief for the Accused-Appellant, p. 28.
- [26] 3 Records, pp. 3, 4.
- [27] TSN, 4 December 1991, p. 2-10; 1 Records, p.232-238.
- [28] Decision dated 28 January 1992, p. 14; Records, 46.
- 30 See *People v. Tejada*, 170 SCRA 497 (1989).
- 31 *People vs. Madarang*, L-70569, 147 SCRA 123 (1987); *People vs. Paco*, G.R. No. 76893, 170 SCRA 681 (1989), see also *People vs. del Pilar*, G.R. No. 86360, 188 SCRA 37 (1989); *People vs. Vocente*, G.R. No. 80533,

188 SCRA 100 (1990)

32 Trial Court Decision, pp. 6-7; Rollo, 25-26.

33 People v. Salguero, 198 SCRA 357 (1991).

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