

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARIO EVANGELISTA Y BUNYAG, ACCUSED-APPELLANT.

G.R. No. 107683. August 11, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

Mario Evangelista was charged with violation of Section 15, Article III of Republic Act No. 6425, as amended (the Dangerous Drugs Act of 1972).

The information filed by the Assistant Prosecutor alleges:

“x x x. That on or about the 23rd day of April, 1991, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without the necessary license or prescription and without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away 0.08 grams of Methamphetamine Hydrochloride (‘Shabu’), a regulated drug, in consideration of P200.00 to one SSgt. Glenn I. Logan, a poseur-buyer, in violation of the above-cited law.

Contrary to law.”[1]

Upon arraignment, the accused pleaded not guilty to the charge. After trial, the court a quo rendered a decision dated 3 September 1992, the dispositive portion of which reads in part:

“WHEREFORE, finding accused Mario Evangelista y Bunyag guilty beyond reasonable doubt of having committed the offense for violation of Section 15, Art. III, R.A. 6425 as amended, he is hereby sentenced to suffer life imprisonment and to pay a fine of P25,000.00. x x x.

SO ORDERED.”[2]

The prosecution presented the testimony of Staff Sergeant Glenn I. Logan of the Narcotics Command, Philippine National Police (“PNP”). The prosecution originally intended to present P/Lt. Leslie Chambers of the PNP Crime Laboratory Service ????? however, prosecution and defense entered into a stipulation of facts covering the matters originally to be established by testimony of P/Lt. Chambers, which testimony was accordingly dispensed with. The testimony of the prosecution witness, SSgt. Glenn I. Logan was summarized by the trial court as follows:

“x x x. On April 23, 1991 at about 2:40 p.m., he [SSgt. Glenn I. Logan] was at 6767 Adahlia, Guadalupe Viejo, Makati where a buy-bust operation was conducted. He was part of the team which conducted the buy-bust operation and he played the role of the poseur-buyer. Capt. Charles Calima, the leader of their team furnished him with two (2) P100.00 bills to be used in the operation (Exhs. ‘E’ & ‘E-1’). The subject of their operation was one Mario Evangelista @ Mayot whom he identified in Court. Their team was guided to the place of Evangelista by their confidential informant who introduced him to Evangelista at the door of the house while the other members of their team positioned themselves in strategic locations. After being introduced to Evangelista as a buyer, the accused asked him how much he was going to buy. He ordered from the accused P200.00 worth of shabu but the accused demanded from him the amount of P200.00 before agreeing to the transaction. After he handed the amount of P200.00, the accused left for a while and when he returned, he

handed to him an aluminum foil containing the suspected shabu which he identified in Court as Exh. 'B.' He also identified the shabu in a self sealing plastic bag which was marked as Exh. 'B-1' as the specimen which was retrieved from the pockets of the accused's short pants. After examining the specimen which was handed to him, he arrested Evangelista.

On cross-examination he reiterated some vital facts in the direct examination and further testified that he did not know the accused prior to April 23, 1991 and that it was their confidential informant who knew the accused and the latter's residence. He conducted a surveillance in the morning of April 23, 1991 and he saw the accused just standing across the street fronting his residence.”[3]

Accused-appellant denied the charges and offered his own story which the trial court summed up in the following terms:

“x x x [P]rior to his indictment in the instant case, he [Mario Evangelista] was working as a driver for Mrs. Cometa whose house is about two (2) kilometers from his own house. On April 23, 1991 between the hours of 12:00 noon and 1:45 p.m. while he was taking his lunch in an eatery (carinderia) located in the corner of Camia and Gumamela Sts. which was about 5 kms. from his house, he was suddenly apprehended by SSg. Glenn Logan. He did not know the reason why he was apprehended. In fact, he did not even know SSg. Glenn Logan at the time. Neither did he know any member of SSg. Logan's team. He denied having seen the shabu allegedly sold by him (Exh. 'B') as well as the shabu which was allegedly recovered from the pocket of his short pants (Exh. 'B-1'). He also denied knowledge of the P200.00 allegedly used as buy-bust money.”[4]

Another witness was presented by the defense, in the person of Rodolfo Laurente, who corroborated Evangelista's story:

“[T]hat the accused was his neighbor and that he had known Evangelista since 1990. He knew Evangelista to be a family man with no derogatory record. On April 23, 1991 between the hours of 12:00 noon and 1:00 p.m., he was eating in a 'carinderia' located at the corner of Gumamela and Camia Streets. There were many people in the eatery at the time, among whom was the accused Mario Evangelista. All of a sudden Evangelista was apprehended by policemen. He did not know the reason why Evangelista was apprehended.”[5]

From his conviction in the trial court, accused-appellant interposed this appeal assigning the following as errors:

- I. The court a quo erred in believing the testimony of SSgt. Glenn I. Logan, who appears not to be credible.
- II. The court erred in not taking due consideration of the statement of defense witness Rodolfo Laurente.
- III. Finally, the court a quo erred in finding that the accused was guilty beyond reasonable doubt.

After a careful examination of the records of this case, the Court finds no error warranting reversal of the findings of facts and the conclusion of the trial court.

The rule has long been settled that the findings of facts of the trial court are accorded great weight and respect and its conclusions on the credibility of the witnesses are not disturbed save for clear and compelling reasons, such as that the trial court has overlooked some important facts which, if properly considered by the trial court, would change the result of the case.[6]

The trial court found the testimony of prosecution witness S/Sgt. Glenn I. Logan, who had acted as poseur-buyer in the “buy-bust” operation as straightforward, convincing and worthy of credence and accordingly, adequate to overcome the presumption of innocence to which appellant Mario Evangelista was entitled:

“Upon weighing the evidence presented by the prosecution and the defense, the Court is convinced that the constitutional presumption of innocence in favor of the accused has been sufficiently overcome by the proof beyond reasonable doubt of his guilt. The principal prosecution witness in the person of Ssg. Glenn Logan

convincingly testified that it was accused Mario Evangelista who sold to him the methamphetamine hydrochloride placed inside an aluminum foil for P200.00. He positively identified the accused in Court. He also identified that methamphetamine hydrochloride shown to him and marked as Exhs. B and B-1 as the same methamphetamine hydrochloride he bought and confiscated from the said accused. There is nothing on the record that will show that Ssg. Logan was actuated with improper motive to testify falsely against the accused. In fact, both Ssg. Logan and the accused admitted in their respective testimonies that they did not know each other prior to April 23, 1991.

‘Credence should be given to the narration of an incident by prosecution witnesses who are police officers and presumed to have performed their duties in a regular manner in the absence of evidence that said witnesses were actuated by improper motives. Their testimonies should be entitled to full faith and credit.’ (People –versus- Boholst y Amadore, G.R. 73008, July 23, 1987)

‘When there is no evidence and nothing to indicate the principal witness for the prosecution was actuated by improper motives, the presumption is that he was not so actuated and his testimony is entitled to full faith and credit.’ (People -vs- Patog, 144 SCRA 429).”[7]

Appellant in his Brief attempted to show that S/Sgt. Logan had made inconsistent statements when he testified and that, therefore, S/Sgt. Logan had lied on the witness stand. Appellant pointed to the following testimony of S/Sgt. Logan:

“x x x. Please consider these:

Q: Before you ????? conduct buy-bust operation, did you conduct a surveillance with your team members?

A: It was the confidential informant who knows alyas Mayot’s residence, sir.

Q: In other words, Mr. Witness, there was no prior surveillance conducted on the person of the accused before the buy bust operation?

A: There was in the morning of April 23, 1991, sir.

Q: It was only in the morning of April 23, 1991 of the same date by whom?

A: I was the one who conducted the surveillance, sir. (TSN, page 18, Oct. 14, 1991)

Then, in a previous answer, SSgt. Logan told the court:

Q: Who led you to the residence of the accused?

A: It was the confidential informant, sir.

Q: Nobody else knew the residence of the accused?

A: I am not aware of it, sir. (TSN, page 17, October 14, 1991).”[8]

From the foregoing excerpts of S/Sgt. Logan’s testimony, appellant argues that since S/Sgt. Logan was not aware of the residence of the accused, he could not have been able to conduct surveillance of such residence as alleged by him. Appellant then concludes that S/Sgt. Logan never placed under surveillance accused’s residence.

One difficulty with appellant’s argument is that he relies on excerpts that he did not quote in the sequence in which such testimony was actually given by S/Sgt. Logan. The testimony of S/Sgt. Logan was given in the following terms and sequence:

“Q: Mr. Witness, did you know the accused prior to April 23, 1991?

A: No[t] personally, sir.

Q: It was (sic) only on the date of the buy-bust operation that you came to know the accused?

A: Yes, sir.

x x x x x x x x

Q: Who led you to the residence of the accused?

A: It was the confidential informant, sir.

Q: Nobody else in the team knew the residence of the accused?

A: I am not aware of it, sir.

Q: Before you went to conduct buy-bust operation, did you conduct a surveillance with your team members?

A: It was the confidential informant who know alyas Mayot's residence, sir.

Q: In other words, Mr. Witness, there was no prior surveillance conducted on the person of the accused before the buy-bust operation?

A: There was in the morning of April 23, 1991, sir.

Q: It was only in the morning of April 23, 1991 of the same date (sic) by whom?

A: I was the one who conducted the surveillance, sir.”[9] (Underscoring supplied)

We are unable to see any inconsistency that may reasonably be imputed to S/Sgt. Logan in the above testimony. S/Sgt. Logan testified that he did not know the address or residence of the accused prior to 23 April 1991, the day when that address was placed under surveillance in the morning and the “buy-bust” operation actually carried out in the afternoon. S/Sgt. Logan testified that it was the confidential informant or informer who knew the residence of the accused, the same informer who led the “buy-bust” team to that address which turned out to be Mario Evangelista's address. The conclusion which appellant came up with -- i.e., that no surveillance and therefore, no “buy-bust” operation had in fact been conducted by the police authorities ????? clearly a non sequitur. Thus, appellant has not adduced any reason why this Court should reverse the conclusion of the trial court that S/Sgt. Logan's testimony must be given credence.

It will be seen that the defenses of appellant Mario Evangelista were denial, “frame-up” and alibi, all of which are inherently, or most frequently, weak defenses commonly rejected by trial courts.[10] Appellant did not attempt to prove his “frame-up” defense. Simple denial, upon the other hand, commonly is insufficient to overcome the positive and convincing testimony of police officers who have not been shown to have some evil motive falsely to accuse appellant of such a serious crime.

In respect of his claim of alibi, Mario Evangelista testified that on 23 April 1991, between the hours of 12:00 noon to 1:45 p.m., he was in an eatery (carinderia) which was about five (5) kilometers away from his residence where the “buy-bust” operation took place.[11] The prosecution witness S/Sgt. Logan testified that the “buy-bust” operation occurred about 2:40 p.m. of the same day at the accused's residence.[12] Thus, appellant's own testimony is not inconsistent with that of the prosecution witness; for five (5) kilometers is a short distance, travelled in, say, ten (10) minutes by means of passenger jeepneys or buses. It was not, in other words, physically impossible for him to have been at the scene of the crime at about 2:40 p.m. of the day that the “buy-bust” operation was conducted.

We find, therefore, that the defenses pleaded by appellant Mario Evangelista offer no compelling basis for overturning the conclusions of the trial court in according full credence to the testimony of S/Sgt. Logan. The common place rule is that the findings of the trial judge and the credibility of witnesses are not to be disturbed on appeal, but rather to be accorded high deference since the judge was in a position physically to observe the witnesses while on the witness stand and, therefore, to ascertain which of them should be accorded credence.

That the trial court relied basically upon the testimony of a single witness is no ground for overturning the judgment of the trial court. In *People v. Labra*,^[13] the Court ruled that:

“x x x. The testimony of a single witness, if credible and positive, is sufficient to convict. Sgt. Danilo Gallego’s testimony was clearly sufficient since he in fact witnessed the sale of marijuana. Accused-appellant failed to establish ill motive on the part of Gallego and neither was he able to satisfactorily show that he was ‘framed.’”^[14]

Finally, the physical evidence on record, that is, the joint affidavit of arrest, the booking sheet and arrest report, the receipt (or acknowledgment) of property seized, the photostatic copy of the money used in the “buy-bust” operation, among other items,^[15] reinforced the presumption of regularity of the performance of official duty by the arresting officers. That presumption appellant Mario Evangelista never succeeded in overcoming.

Finally, we turn to determination of the penalty properly imposable upon appellant Evangelista. Under Sections 15 and 20 of R.A. No. 6425, as last amended by R.A. No. 7659, and as construed and applied with retroactive effect in the very recent Decision of this Court in *People v. Martin Simon* (G.R. No. 93028, 29 July 1994), and given the circumstances that (a) the “shabu” sold by appellant Evangelista consisted only of one (1) aluminum foil with a weight of 0.08 gram^[16] and that (b) no aggravating or mitigating circumstance was found in the instant case, the penalty properly imposable upon appellant Vivar is prison correccional in its medium period. Applying the Indeterminate Sentence Law, again in accordance with the majority ruling of this Court in the *Martin Simon* case, appellant Mario Evangelista is properly sentenced to imprisonment for a term ranging from, as a minimum, six (6) months of arresto mayor to a maximum of two (2) years and four (4) months of prison correccional in its medium period.

WHEREFORE, for all the foregoing, the decision of the trial court dated 3 September 1992 is hereby AFFIRMED, with the modifications, however, that the fine of P25,000.00 is deleted, and that appellant shall suffer imprisonment for an indeterminate period ranging from six (6) months of arresto mayor as minimum to two (2) years and four (4) months of prison correccional as maximum. Costs against appellant.

SO ORDERED.

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

[1] Rollo, p. 4.

[2] *Id.*, pp. 10-16.

[3] *Id.*, pp. 12-13.

[4] *Id.*, p. 13.

[5] *Id.*, p. 14.

[6] *People v. Martinez*, 205 SCRA 666 (1992); *Collado v. Intermediate Appellate Court*, 206 SCRA 206 (1992); *People v. Mauyao*, 207 SCRA 732 (1992); *Borillo v. Court of Appeals*, 209 SCRA 130 (1992); *People v.*

Francisco, 182 SCRA 305 (1990).

[7] Rollo, pp. 14-15.

[8] Id., p. 30.

[9] TSN, 14 October 1991, pp. 16-18.

[10] People vs. Fernandez, 209 SCRA 1 (1992); People vs. Acuram, 209 SCRA 281 (1992).

[11] TSN, February 25, 1992, pp. 4 and 6; Rollo, pp. 113 and 115.

[12] TSN, October 14, 1991, pp. 6-9; Rollo pp. 82-85.

[13] 215 SCRA 822 (1992).

[14] 215 SCRA at 827.

[15] Original Record, pp. 6-10 and pp. 54-55.

[16] The information charged Evangelista with having sold 0.08 gram of methamphetamine hydrochloride (shabu). We note that the “Booking Sheet and Arrest Report” and the “Receipt of Property Seized” executed by the arresting and seizing officers stated the amount of shabu sold as 0.20 gram “more or less.” (Record, pp. 8-9). The Report (Exhibit “C”) of PNP Crime Laboratory Service, dated 24 April 1991, and signed by Forensic Chemist Leslie B. Chambers, referred to the “specimen submitted” for examination (Exhibit “A”) as: “one piece of aluminum foil containing 0.08 gram of white crystalline substance” and (Exhibit “B”) “one small self-sealing transparent plastic hag containing 0.99 gram [sic] of-white crystalline substance.” (Record, p. 53). The trial court made no finding on the matter of the precise amount of shabu sold by appellant Evangelista.

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