

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLAND L. MELOSANTOS, ACCUSED-APPELLANT.*G.R. No. 115304. July 03, 1995*

Ponente: MELO, J.

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Amidst the pervasive and escalating traffic of illegal drugs, the decision of the court a quo in Criminal Case No. 2188-D which principally adjudged the culpability of Roland L. Melosantos for the illicit sale of one kilogram of "shabu", and imposed the penalty of life imprisonment (p. 240, Record) could have received the approbation of a public already exasperated with the seemingly endless social malady. But not for Roland L. Melosantos who continues to profess his innocence in the appeal now before us.

The theory of the People is to the effect that accused-appellant's apprehension was preceded by a buy-bust operation on October 10, 1992 during which occasion, accused-appellant was caught in the process of transacting the sale of 1 kilogram of "shabu" with the arresting team. To buttress this general proposition, SPO1 Jeremias Manlatao of the Narcotics Command was offered as the first witness of the prosecution. His essential testimony is to the effect that he was the poseur-buyer; that he was at the Shell Gas Station in front of Unimart, Greenhills around 9:30 o'clock in the morning together with Supt. Elenzano, SPO4 Velasco, including the confidential informer, waiting for accused-appellant who had previously agreed, through the confidential informer, to sell 1 kilogram of shabu at P450.00 per gram; that when accused-appellant arrived on the designated time and place on board a red Mitsubishi Lancer, he disembarked from the car and asked for the payment to which request the witness acceded (tsn, Nov. 25, 1992, pp. 4, 7, 8, & 11).

In the course of his open court statements, SPO1 Manlatao affirmed his signature appearing on the Joint Affidavit of Arrest which reads:

We, the undersigned, members of the Philippine National Police (PNP) presently assigned with the Special Operations Division, PNP Narcotics Command (NARCOM) stationed at Camp Crame, Quezon City, after having been duly sworn to in accordance with law, hereby depose and say;

That in the morning of October 10, 1992, Superintendent CESAR D. ELENZANO PNP designated SPO1 Jeremias Manlatao PNP to pose as buyer of Methamphetamine Hydrochloride and furnished him five hundred peso bills sandwiching each bundle, with serial numbers H597244, BU879337, BM612211, BQ568403, ASO61621, AR830122, BJ523199 and BT993216, to represent the amount of four hundred fifty thousand pesos, to be used in a buy-bust operation against the source of Methamphetamine Hydrochloride of arrested suspect VIRGILIO "TENG" CARLOS identified as alias ROLAND;

That, Virgilio Carlos who voluntarily agreed to cooperate and expecting nothing in return, contacted alias ROLAND then indorsed SPO1 Manlatao as a big-time buyer of Methamphetamine Hcl. SPO1 Manlatao then ordered for a kilo of said regulated drug at alias ROLAND's price of four hundred fifty pesos per gram and alias ROLAND agreed to sell and suggested that they meet at around 9:30 in the morning of same date at the Shell Gas

Station in front the Unimart Shopping Center, Greenhills, San Juan, Metro Manila to consummate the seal;

That, it was about 9:30 A.M of same date, when alias ROLAND arrived on board a red Lancer car with license plate number PGZ 138 and approached SPO1 Manlatao and Virgilio Carlos asking to see the payment for the one kilo of Methamphetamine Hcl ordered for and SPO1 Manlatao obligingly showed it. Alias ROLAND then motioned them to follow him to his car and opened its trunk where he opened a cartoon box containing transparent plastic bags with contents of what he claimed to be the one kilo of Methamphetamine Hcl ordered for and handed it over to SPO1 Manlatao demanding for its payment. It was then that SPO1 Manlatao gave the pre-arranged signal to the rest of the undersigned back-up who rushed to the scene identifying themselves and SPO1 Manlatao as NARCOM Agents and arrested alias ROLAND who was apprised of the nature of his arrest and his Constitutional Rights and was identified as ROLAND MELOSANTOS y LAPENA, 36 years old, married, native of Quezon City, businessman and resident of Nr. 6 Catleya Street, Mindanao Avenue, Project 6, Quezon City;

That, upon arrest, ROLAND MELOSANTOS immediately declared that he is just a courier ordered by Michael Ty to deliver and sell the said stuff (Shabu) to any prospective buyer and was told to sell said shabu at four hundred pesos per gram so that the stuff could easily be converted into cash as Michael Ty needs the money very badly;

That, suspect Roland Melosantos even surrendered his Easy pager unit to the undersigned to show the messages sent to him by Michael Ty and to prove to us that indeed he was just ordered to sell the shabu by Michael Ty;

That, arrested suspect with seized evidence were brought to Special Operations Division, PNP Narcotics Command at Camp Crame, Quezon City for investigation and proper disposition;

IN WITNESS WHEREOF, we hereunto signed this Joint Affidavit of Arrest/Poseur Buyer this 10th day of October 1992, here at Camp Crame, Quezon City;

AFFIANTS FURTHER SAY NONE.

(Sgd)

(Sgd)

SPO1 Jeremias Manlatao PNP SPO1

Osmundo G. Filomeno PNP

- Affiant -

- Affiant -

(Sgd)

PO3 Aurelio Blancas PNP

- Affiant -

(pp. 101-102, Record.)

To corroborate the fact of arrest, SPO1 Osmundo Filomeno next sat on the witness stand and offered the information that the proposal to buy 1 kilogram of shabu, relayed through an Easy Call Unit, emanated from SPO1 Manlatao; he further declared that when the poseur-buyer showed the money to the suspect, both the poseur-buyer and suspect went to the car where the shabu was shown to the poseur-buyer and that when the

pre-arranged signal was given, the group approached and apprehended the suspect (tsn, Nov. 26, 1992, pp. 4-6).

The examination-in-chief of Pedro Velasco, who was presented as the third witness of the People, was geared towards establishing the investigation he conducted relative to the suspect's apprehension. In line with his duty, this witness stated before the trial court that he asked the arresting officer what transpired during the operation in question whose response was made formal by Velasco via a joint affidavit of arrest (tsn, Jan. 13, 1993, pp. 4 & 8).

Julita de Villa, a forensic chemist of the Philippine National Police, attested to the fact that the items endorsed to her after physical, chemical, and chromatographic examinations tested positive for methamphetamine hydrochloride or "shabu" (tsn, Jan. 27, 1993, p. 13).

Juxtaposed with the inculpatory mass of evidence adduced by the prosecution is accused-appellant's claim that no buy-bust operation was conducted, and that it was a certain Michael Ty who was caught in possession of the prohibited articles. Relative to this form of exculpation, accused-appellant testified that at around 7 o'clock in the morning of October 10, 1992, Michael Ty arrived at the house of accused-appellant's parents-in-law inasmuch as Ty wanted to buy accused-appellant's Mitsubishi Lancer car. Ty supposedly asked permission to use the residence telephone from Melosantos. After Ty was granted permission, accused-appellant allegedly noticed that Ty gave the residence phone number of accused-appellant's parents-in-law to the person with whom Ty was conversing over the phone. Thereafter, accused-appellant continued to narrate, when he and Ty returned to the house after a 15-minute test drive of the car within Park Way Village, the phone rung, that he answered, but the call was for Ty who then talked twice with the caller (tsn, March 16, 1993, pp. 3-15). When Ty and accused-appellant agreed on the purchase price of the car, another test drive was conducted along EDSA, with accused-appellant on the wheel and Ty, whom accused-appellant noticed to be carrying a plastic bag, on the passenger side (*ibid.*, p. 17). Accused-appellant further claimed that he was instructed by Ty to proceed towards Greenhills and to stop at the Shell Gas Station at the corner of Ortigas Avenue and Wilson St. where Ty was supposed to pick up the money for the purchase price of accused-appellant's car (*ibid.*, pp. 18-19); and that while waiting at the station, a group of armed men arrived, searched accused-appellant's car which yielded the shabu in Ty's plastic bag (*ibid.*, pp. 20-26).

In decreeing the criminal accountability of accused-appellant, the trial judge made the initial observation that the absence of ill-motive on the part of prosecution witnesses to fabricate the buy-bust operation, as well as the presumption under adjective law towards the regularity in the performance of the law enforcers' duty are sufficient factors to incline one to a judgment of conviction (p. 9, Decision; p. 220, Record). And in response to the serious contradictions allegedly committed by the People's witnesses, the magistrate below explained that he saw no irreconcilable differences on material points, and that rather, the divergence of perception on certain details typifies truthfulness, apart from the undeniable circumstance that the suspect was caught in flagrante (pp. 20-27, Decision; pp. 231-238, Record).

Hence, the appeal at bench interposed by Melosantos wherein it is argued that the trial court erred in -

I. ... not considering the glaring lies, serious inconsistencies and substantial contradictions in the testimonies of the prosecution witnesses in the manner and conduct of the alleged "buy-bust operation" that should have invalidated their testimonies and entitled the accused to an acquittal.

II. ... not ruling that the failure of the known confidential informant to take the witness stand is fatal to the cause of the prosecution.

III. ... ruling that the identity of the confiscated items was assured by Julita de Villa, the forensic chemist.

IV ... not finding that that the NARCOM, using their captive "informant" induced, lured and instigated the accused to commit a "crime".

V. ... convicting the accused applying the statutory presumption that law enforcers are presumed to have regularly performed their duty.

At this juncture, it is significant to recall to mind the proposition of the principal witnesses of the prosecution in their joint affidavit of arrest (pp. 101-102, Record) to the effect that the buy-bust operation was concocted on account of the implicit confession from an arrested suspect in the person of Virgilio "TENG" Carlos that herein accused-appellant was the source of the drugs. It is also interesting to note that the so-called arrested person who pointed the accusing finger at Melosantos was never presented as a witness for the People. Given these considerations, we cannot help observing that the incriminating statement in the joint affidavit of arrest against Melosantos linking him to the pernicious activity must be disregarded, nay, struck down inasmuch as the import thereof is hearsay in character. The second-hand information of Carlos implicating Melosantos as the brains of the illegal peddling narrated to, and conveyed by SPO1 Manlatao before the court a quo must similarly be jettisoned as a breach of the hearsay rule. In response to the magistrate's questions along this line, SPO1 Manlatao said:

Court -

And now you came to know the source of this shabu from Virgilio "Teng" Carlos?

A - Yes, sir.

Court - So you came to know from Virgilio "Teng" Carlos the source of the shabu?

A - Yes, sir.

Court -

Through whom is the source?

A - What he said was from Roland Melosantos, sir.

Court -

Next question, counsel.

Atty. Sarmiento to Witness -

Q That testimony that the source was Roland came from Virgilio "Teng" Carlos?

A Yes, sir.

(tsn, pp. 30-31, Jan. 20, 1993.)

Indeed, any oral or documentary evidence is hearsay by nature if its probative value is not based on the personal knowledge of the witness but on the knowledge of some other person not on the witness stand (2 Regalado, Remedial Law Compendium, 1989 6th Rev. Ed., p. 486). By virtue of this legal aphorism, no probative value can attach to the alleged confession of Carlos albeit no objection thereto was interposed by the defense (People vs. Villahermosa, (CA) 67 O.G. 4920 citing People vs. Cabral, et al., (unpub.) 58 Phil. 946; Vide, at p. 486). Verily, in criminal cases the admission of hearsay evidence would be a violation of the constitutional provision that the accused shall enjoy the right of being confronted with the witnesses testifying against him and to cross-examine them. Moreover, the court is without opportunity to test the credibility of hearsay statements by observing the demeanor of the person who supposedly made them (20 Am. Jur. 400-401; cited at 7-I, Francisco, Revised Rules of Court, 1973 ed., p. 437).

Of course, we are aware of the People's prerogative as to who will be presented to sit on the witness stand to establish the essential ingredients of the crime. There can hardly be any debate on this point, but the prosecution evidence must at all times be competent and admissible to sustain its stand. Surely, the prosecution can not rely for conviction on an imaginary person charging a serious offense without extending to the accused the benefit of confronting his accuser (People vs. Bagano (181 SCRA 747 [1990])). Withal, in default of a satisfactory premise for the non-presentation of a crucial witness like Carlos, it ineluctably follows that the disputable presumption that evidence deliberately withheld would be adverse if produced (Section 3(e), Rule 131, Revised Rules on Evidence) remains undisturbed. Moreover, the import of Carlos' "cooperation" specified under the third paragraph of the Joint Affidavit of Arrest is antithetical to the corollary axiom in remedial law of *res inter alios acta alteri nocere non debet* under Section 28, Rule 130 of the Revised Rules of Court, in the absence of independent proof for the application of the exceptions to the established principle that a transaction between two persons ought not to operate to the prejudice of another. If, in People vs. Guillermo (93 SCRA 168; 176 [1979]); 1 Padilla, Evidence, 1988 ed., p. 457) the confessions of the co-accused may not be accepted against the rest of the accused due to the *res inter alios acta* rule then, a fortiori, the alleged "cooperation" of Carlos who was never presented as a witness in pointing to Melosantos as source of shabu must equally be repudiated.

Let us now shift the focus of discourse to the deportment of the witnesses of the People starting with the cross-examination of SPO1 Manlatao after he stated under the first paragraph of the Joint Affidavit of Arrest that Virgilio "Teng" Carlos was an "arrested suspect":

Atty. Agoot to Witness -

Q

Mr. Witness, you mentioned "informant", how long have you known this informant that you are telling us?

A

For almost two (2) weeks, sir.

Atty. Agoot to Witness -

Q

Is this a regular informant of your office?

A

No, sir, he is not a regular informant, sir.

Q

Is your informant a person who was previously arrested by your office in connection with drugs?

A

Yes, sir.

Q

So this is not a confidential informant. The truth of the matter is that, he was arrested before by your office in connection with drugs, is that not correct?

A

From my analysis, sir, he is a confidential informant.

Q

Do you know the distinction of a confidential informant and a person who was previously arrested before for violation of Republic Act 6425?

A

I do not know, sir.

Atty. Agoot to Witness -

Q

You do not know that, Mr. Witness?

A

I do not know, sir.

Q

Now, this informant, is this not the same Virgilio Carlos who was arrested previously by your office in connection with violation of Republic Act 6425?

A

I do not know, sir.

Q

Alright, Mr. Witness, I will read paragraph 3 of your joint affidavit which state that: 'Virgilio Carlos who voluntarily agreed to cooperate and expect nothing in return contacted alias Roland then indorsed SPO1 Manlatao as a big time buyer of methamphetamine hydrochloride x x x' - I will stop to that point, Mr. Witness, now, what you stated here is a certain Virgilio Carlos, is this Virgilio Carlos the same informant that you are telling us?

A

Yes, sir.

Atty. Agoot to Witness -

Q

So it is not correct that what you said a while ago that the informant is a certain Virgilio Carlos who was previously arrested, is that not correct?

A

I do not know him, sir. He introduced himself to our ranking officer that he will act as informer.

Atty. Agoot to Witness -

Q

Who introduced himself, Virgilio Carlos?

A

Yes, sir.

Q

But you stated here that this Virgilio Carlos before was formerly arrested in your affidavit, is that not correct?

A

—

Fiscal Paudac -

Your Honor please, may I request the counsel to show it to the witness if there is affidavit to that effect.

Court -

Witness may answer.

A

Yes, sir.

Atty. Agoot to Witness -

Q

When you said "yes", you are now changing your testimony that this Carlos was not arrested before, is that what you are telling us?

A

—

Fiscal Paudac -

Your Honor, the witness testify a while ago that he is the same Carlos.

Court -

Next question.

Atty. Agoot to Witness -

Q

Now, you mentioned that this Carlos before was arrested. Do you have any record of that arrest that was made on this Virgilio Carlos?

A

I do not know, sir.

Q

And what was then your basis in placing in this affidavit that Virgilio Carlos before was arrested before of violation of Republic Act 6425 - you do not have any record of arrest of Virgilio Carlos?

A

I do not know, sir.

(tsn., pp. 27-33, Nov. 25, 1992.)

Inasmuch as the previous sworn statement of SPO1 Manlatao, anent the question of whether Carlos was an arrested suspect, is diametrically opposed to his declaration before the court a quo, the message conveyed by him must be received with extreme caution for it raises serious doubts on the veracity of his statements (People vs. Casim, 213 SCRA 390; 396 [1992]). And contrary to the opinion of the court a quo that the variance is irrelevant to accused-appellant's apprehension, we feel that Carlos' "confession" while supposedly in the custody of the police officers or "cooperation" as confidential informer, is a significant detail considering that the "cooperation" of Carlos spawned the alleged buy-bust operation against accused-appellant.

What can not likewise be ignored is the discrepancy in SPO1 Manlatao's narration on where and how Carlos allegedly contacted accused-appellant. He testified on November 25, 1992 in this manner:

Fiscal Paudac to Witness -

Q

When your informer order the one (1) kilo of "shabu" to the accused, where were your?

A

At the Greenhills, San Juan, sir.

Q

You said, Mr. Witness, that the confidential informer of yours order one (1) kilo of "shabu", will you please inform this court how did your confidential informer order that "shabu"?

A

Through the Easy Call, sir.

Q

In what place did the confidential informer call the accused through Easy Call?

A

In Greenhills, sir.

Fiscal Paudac to Witness -

Q

At the time when the confidential informer was calling the accused, where were you?

A

Together with the informer, sir.

(tsn, pp. 9-10, Nov. 25, 1992.)

but when recalled on the witness stand on January 20, 1993, SPO1 Manlatao declared in no uncertain terms that Carlos contacted accused-appellant through telephone at the Special Operation Division at Camp Crame, Quezon City:

Atty. Sarmiento to Witness -

Mr. Witness, how did Virgilio "Teng" Carlos contact Roland Melosantos?

A

Through the telephone, sir.

Q

How did he contact Roland Melosantos?

A

At the headquarters, sir.

Q

Where were you in relation to Virgilio Teng Carlos when he contacted alias Roland Melosantos?

A

At the office of the Special Operation of Camp Crame, sir.

Atty. Sarmiento to Witness -

Q

And how far were you from Virgilio Teng Carlos then?

A

Almost two (2) meters, sir.

Q

So much so that you could hear what Virgilio Teng Carlos was telling alias Roland over the telephone?

A

Yes, sir.

Q

What was he telling alias Roland when he first contacted that alias Roland?

A

If he can get a shabu, sir.

Q

Who stated that statement?

A

Virgilio "Teng" Carlos, sir.

Q

So we are clear that the proposition to buy the shabu came from Virgilio "Teng" Carlos?

A

Yes, sir, he was the one who contact him.

Atty. Sarmiento to Witness -

Q

How long did they talk over the telephone?

A

For almost two (2) hours, sir.

Q

Are you sure?

A

Yes, sir.

Q

That was the first call?

A

Yes, sir.

Q

And after two hours, what transpired?

A

They spent another three (3) hours; still another telephone conversation of three (3) hours after two (2) hours he again contacted him, sir.

(tsn., pp. 20-22, January 20, 1993.)

The foregoing vacillating responses of SPO1 Manlatao bring to mind Justice Padilla's expressions enunciated in *People vs. Crisostomo* (222 SCRA 511; 515-516 [1993]), thus:

The question of how the initial contact between the poseur-buyer and the alleged pusher was made is material since whatever sale of prohibited drugs subsequently occurred would result from that initial contact. The manner by which initial contact is made likewise becomes material in cases where there is a question of whether there is a valid entrapment. All the elements of the sale transaction must be clearly and adequately shown, starting from the initial contact between the buyer and the alleged pusher until the sale is completed by the delivery of the illegal drug subject of the sale. The constitutional presumption of innocence demands no less than the moral certainty that there was indeed a sale of an illegal drug by the alleged pusher.

The materiality of discrepancies in the testimonies of prosecution witnesses should be determined based on the particular circumstances of a given case. In the case at bar, the initial contact between CIC Cartel and the alleged pusher becomes material when we consider the statement of Cartel that he asked the person sitting down where to find Bonicol and the accused allegedly answered "I am Bonicol. Why, do you want to `score'?" On the other hand, as already pointed out, Sgt. Bonete testified that CIC Cartel was approached by the alleged pusher. The conflict of the two (2) versions is irreconcilable. In this case, the commencement of the sales transaction is dependent on the initial contact between Cartel and the alleged pusher. It is improbable for Sgt. Bonete to have failed to notice that it was Cartel who approached the person who was sitting down rather than Bonicol approaching Cartel. This inevitably leads to the conclusion that either only one of the two (2) witnesses related the correct sequence of events or neither of them stated the true events. The records fail to show which of the two (2) conflicting versions is correct. And yet, the conviction of the accused cannot be based on speculations that the version consistent with guilt is correct. If the inculpatory facts and circumstances are capable of two (2) or more explanations one or more of which is consistent with the innocence of the accused, then the test of moral certainty required to support a conviction is not met.

In addition to the constable's irreversible blunder, is SPO1 Felomino's equally damaging revelation that it was SPO1 Manlatao and not Carlos who talked and ordered "shabu" from accused-appellant over the phone and Easy Call, and that Felomino was at the NARCOM office in Camp Crame and not in Greenhills when the order was made:

Q

Now on October 10, 1992 do you remember the place where you were?

A

Yes, sir.

Q

Where were you?

A

I was at the headquarters.

Q

What were you doing there in your headquarters?

A

We are planning a project against a person.

Q

Now, you said that you were in your office Camp Crame and that you have some proposed person to be arrested?

Who is the name of that person?

A

His name is Roland Melosantos.

Q

Why do you plan to arrest that person?

A

Through a buy bust operation we ordered from him 1 kilo of shabu.

Q

When was that?

A

Last October 10, 1992, sir.

Q

Who ordered the 1 kilo shabu to the accused?

A

We, sir.

Q

Your group?

A

Yes, sir and our commanding officer granted us to do that job.

Q

Do you remember if there was any unusual event that happened on October 10, 1992?

A

Yes, sir.

Q

Will you please inform this court, what is that incident all about?

A

Yes, that at 9:00 in the morning on October 10, 1992 we ordered 1 kilo of shabu from Roland Melosantos through telephone, sir.

Q

What kind of phone?

A

Through PLDT, sir.

Q

Why do you have PLDT phone?

A

Yes, sir.

By Fiscal Paudac:

A

We have a PLDT Phone and Easy Call.

Q

Now who made the Easy Call?

A

Our companion, sir.

Q

Who is the name of that person?

A

SPO1 Manlatao, sir.

Q

Were you there at the time when the phone call was made?

A

Yes, sir.

Q

More or less how far were you from SPO1 Manlatao?

A

About two arms length, sir.

Q

After that telephone call, what happened next?

A

When we ordered 1 kilo of shabu then the one we talked to agreed to meet us outside the shell gas station.

Q

Where is that shell gas station located?

A

In front of the Unimart Shopping Center at Ortigas, Greenhills, sir.

(tsn, pp. 3-4, November 26, 1992.)

Indeed, where two alleged eyewitnesses contradict themselves on vital and material circumstances such as the place where the proposal for the purchase of drugs was made, and concerning the identity of the person who established the initial contact with the supposed pusher, the element of reasonable doubt is injected, and may not be overlooked (*People vs. Eroles*, 226 SCRA 544; 559 [1993]) for a verbal collision in the testimony of prosecution witnesses cast serious doubts as to their credibility (*People vs. Aranda*, 226 SCRA 562; 570 [1993]).

Further proof of the prosecution's weak version is SPO4 Velasco's story given on January 13, 1993 to the effect that he was in Camp Crame on October 10, 1992 and that he conducted the investigation of accused-appellant:

On rebuttal, however, SPO4 Velasco abandoned his so-called duty as investigator-after-the-fact, and disclosed his sudden participation in the buy-bust operation:

Fiscal Paudac:

Q Where were you on October 10, 1992?

A I was at the gasoline station together with the group of Jeremias Manlatao, sir.

Q And what were you doing there at the gasoline station?

A We were waiting for the arrival of Roland Melosantos, sir.

(tsn, pp. 5-6, April 7, 1993.)

And when subjected to further examination, Velasco denied that he was one who conducted the post operation investigation against accused-appellant:

Atty. Sarmiento (Cross Examination)

Q

Sgt. Velasco, it will appear from your testimony now . . . I withdraw that question.

What is your actual participation in this case?

By Atty. Sarmiento (To the witness)

A

I am an operative, sir.

Q

You were a back-up team in that buy-bust operation?

A

—

Fiscal Paudac:

Already answered, Your Honor.

A member of the operative group.

Atty. Sarmiento:

When you said you are a member of the operatives, what was your actual role as a member of the operatives?

A

When our poseur buyer gave his signal then that will be the time, we will come closer.

By Atty. Sarmiento (To the witness)

Q

So, for you to arrest the suspect, after that signal, that was your only role in this buy bust operation of Roland Melosantos?

A

Yes, sir.

Q

Are you sure?

A

Yes, sir.

Q

Were you the one who actually investigated Roland Melosantos?

A

No, sir.

Q

So, you were not the investigator who investigated Roland Melosantos?

A

I was not the one, sir.

Q

Are you very sure of that answer?

A

—

Fiscal Paudac:

Already answered, Your Honor.

(tsn., pp. 14-16, April 7, 1993.)

Even on the assumption that SPO4 Velasco conducted an investigation, the fact that it was made in the absence of accused-appellant's counsel all the more enfeebles the People's cause. The irregular manner of accused-appellant's interrogation was elicited from Velasco himself:

ATTY. SARMIENTO:

Q

SPO4 Velasco, you said that during the custodial investigation the accused Roland Melosantos admitted to you that the "Shabu" was seized in his possession, did I hear you right?

A

Yes, sir.

Q

Was he assisted by counsel when he admitted that?

A

No, sir.

Q

The admission was oral?

A

Yes, sir.

(tsn., p. 28, January 13, 1993.)

It is thus, very clear from the foregoing comparison of Velasco's utterances that he, too, is unworthy of credence considering that the ensuing elastic responses he gave do not jibe and gratingly contradict his original role as plain investigator of the so-called operation. The court below offered the explanation that "as a NARCOM Investigator, SPO4 Velasco may also be assigned, in addition to his work as a member of the operation team" (p. 22, Decision; p. 233, Record). On this point, it was totally unwarranted for the judge to assume that SPO4 Velasco was in fact assigned by his superiors to participate in the apprehension, in default of the missing link as it were from the witness himself. A supposition of this character is definitely not synonymous with the requisite quantum of proof. And in an effort to solve the enigma, the trial court even emphasized that "SPO1 Manlatao was emphatic when he said that SPO4 Velasco was at the gasoline station as a member of the back-up team" (p. 22, Decision; p. 233, Record). Again, we must stress that an assertion along this line by SPO1 Manlatao is radically opposed to SPO4 Velasco's description of his limited role, and consequently, must be received with the usual caveat when confronted with irreconcilable differences (*People vs. Aranda, supra*).

The defense of accused-appellant appears to be shallow, yet the absence of depth would not warrant his conviction if, in the first place, the evidence of the People is anchored on a shaky foundation. This is but the

necessary consequence of the adjective norm that the prosecution has the onus probandi of establishing the guilt of the accused (People vs. Sayat, 223 SCRA 285; 290 [1993]); Sibal and Salazar, Compendium on Evidence, 1995, 4th ed., p. 297). At any rate, the presumption that official duty has been regularly performed cannot by itself, prevail against the constitutional presumption of innocence accorded the accused (People vs. Salcedo, 195 SCRA 345; 353 [1993]).

Much as we share the abhorrence of the disenchanted public in regard to the proliferation of drug pushers, this Court cannot permit the incarceration of an individual based on insufficient factual nexus of that person's participation in the commission of the offense.

WHEREFORE, the decision appealed from is hereby reversed and another one entered acquitting ROLAND MELOSANTOS of the crime charged. His immediate release is hereby ordered unless he is detained for some other lawful cause. Costs de oficio.

SO ORDERED.

Feliciano, (Chairman), Romero, Vitug, and Francisco, JJ., concur.

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