

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ANGELITO TAN Y NUBLA, ACCUSED-APPELLANT.*G.R. No. 129376. May 29, 2002*

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-129376/>**YNARES-SANTIAGO, J.:**

Angelito N. Tan is a Manila-based businessman who also operates a small restaurant in the San Francisco area. He supports his wife, three sons and a daughter, all of whom reside in the United States. He was accused by the police of selling and possessing illegal drugs. He insists that he was framed, but the police officers who nabbed him claim that he was arrested in flagrante delicto during a legitimate buy-bust operation. At stake is the life and freedom of a father of four, who has been sentenced to spend the rest of his productive life behind bars. Also on the line is the State's implacable policy of ridding society of those who wreak havoc on the lives of others by pushing illegal drugs.

Accused-appellant Angelito Tan was charged with Violation of Section 15 (b), Article III in relation to Section 2 (e), (f), (m), (o) of R.A. No. 6425, as amended by P.D. No. 1683, otherwise known as the Dangerous Drugs Act, in an information which alleges:

That on or about the 27[th] day of June 1994 in Quezon City Philippines, the said accused, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug did then and there wilfully and unlawfully sell or offer for sale 492.4054 grams white crystalline substance known as 'SHABU' containing methamphetamine hydrochloride, which is a regulated drug.

CONTRARY TO LAW.[1]

Accused-appellant pleaded "Not Guilty" when arraigned.[2] The case thereafter proceeded to trial.

The prosecution's version of the incident is as follows:

On June 23, 1994, SPO1 Liberato Abalos of the PNP Narcotics Command received a tip from one of their confidential informants that a certain Lito was engaged in drug trafficking at his residence in No. 14-B Condominium, Banawe corner Retiro Streets, Quezon City. Senior Inspector Franklin Mabanag formed a team consisting of Abalos, SPO3 Edgardo Lara, SPO4 Ernesto Carpio and Noel Castanieto to conduct a surveillance on the area. They returned to Camp Bagong Diwa, Bicutan, Taguig, Metro Manila, where their informant called up Lito on the telephone. The informant informed Lito that he had a friend who just arrived from the Middle East and who was looking for shabu. Abalos talked with Lito and told him he wanted to buy five hundred grams of shabu. Lito informed Abalos that the price was P700.00 per gram, but after bargaining Lito agreed to sell the shabu for P650.00 per gram.[3]

In the early morning of June 27, 1994, Lito instructed Abalos to meet him at the corner of Banawe and Retiro Streets to pick up the shabu. Thus, a buy-bust operation was planned. Abalos was designated as the poseur-buyer. Abalos brought with him seven P1,000.00 bills dusted with ultra-violet powder, contained in a letter envelope

with fake money.[4]

Later that morning, Abalos and the informant positioned themselves at the appointed place. After a few minutes, accused-appellant Angelito Tan approached them. The informant told accused-appellant that he was going to buy five hundred grams of shabu, whereupon accused-appellant handed to Abalos a plastic bag saying, "This is it." Abalos looked inside the plastic bag and found five sachets containing yellow substance. Abalos then gave accused-appellant the envelope. When accused-appellant opened the envelope and saw the fake money, he started to run. The informant threw his cigarette butt, which was the cue that the sale had been completed. Mabanag, Lara and Castanieto appeared. Lara chased accused-appellant and caught him near the PCI Bank ten meters away from the corner. Accused-appellant was frisked and informed of his constitutional rights.[5] Accused-appellant was brought to Camp Bagong Diwa, Bicutan, Taguig, Metro Manila.[6]

At Camp Bagong Diwa, Carpio took the statement of the poseur-buyer, Abalos, while Mabanag and Lara executed their joint affidavit of arrest. The substance obtained from accused-appellant was sent to the National Bureau of Investigation for analysis.[7]

That evening, accused-appellant was brought to the PNP Crime Laboratory, Camp Crame, Quezon City. The seven pieces of P1,000.00 bills were brought to the PNP Crime Laboratory for examination. Forensic Chemist Salud Rosales examined accused-appellant and found that his hands were positive for ultra-violet powder.[8] The examination of the genuine bills also yielded positive for ultra-violet powder.[9] Meanwhile, the examination of the substance taken from accused-appellant were found to be methamphetamine hydrochloride.[10]

Accused-appellant had a diametrically opposed version of the events. He alleged that he was with his mistress at the Villa Estrella Resort in Bauang, La Union from June 22 to June 24, 1994, as shown by the receipts he submitted in evidence.[11] On June 26, 1994, he went to the casino at the Pavilion Hotel in Manila where he was regularly engaged in the money-lending business. He left the casino at 7:00 a.m. the next day and went to the PNB-Republic Bank in Arranque.

Since he was too sleepy to drive, accused-appellant asked his nephew, Michael Solano, to fetch him from the bank and to take him home. When they arrived at the condominium, accused-appellant went upstairs while Solano parked his car. Two men approached him and told him he was driving a carnapped vehicle. The men asked to see his uncle and went up the condominium with Solano. When they got to accused-appellant's unit, they grabbed him by the hand and forced him to go with them.[12]

Accused-appellant was brought to Camp Papa and told that he was being held for selling shabu. Captain Mabanag intimated to him that they will release him for a consideration of P1,000,000.00 and a deed of sale over Solano's car. Accused-appellant refused since he has not done anything wrong and the car does not belong to him.

Later that night, accused-appellant was told that they will go to his house to get some clothes and to inform his mother of his whereabouts. He rode a car with SPO1 Abalos, SPO4 Lara and one Pascual. Abalos told him that they will eat because he was hungry, but accused-appellant told him that he had no money. Abalos produced five one thousand-peso bills and offered to lend the money to accused-appellant if he will pay him back at his house. Accused-appellant reached out for the bills with his left hand. Abalos ordered him to count them. Before he could finish counting, Abalos snatched the bills from him. Suddenly, accused-appellant felt something rough on his hands. After that, accused-appellant was brought to the PC Crime Laboratory in Camp Crame where his hands were examined for ultra-violet powder.[13]

Accused-appellant's version of the incident is corroborated by several witnesses. His nephew, Michael Solano, confirmed that he went to the bank to fetch his uncle. He further stated that he went with his uncle to Camp

Bagong Diwa where he stayed from 12:00 p.m. to 7:30 p.m., until the police released him the evening of the same day.[14]

Leoncio Pangilinan, Savings Account Clerk of PNB-Republic Bank in Arraque, testified that he entertained accused-appellant, who was a valued client of the bank, at 7:45 a.m. on June 27, 1994. Accused-appellant was fetched by Solano and they left the bank in Solano's car at about 9:00 a.m.[15]

Eduardo Triunphante, janitor of the Evangeline Building which houses the condominium, saw accused-appellant leaving his residence accompanied by two men.[16] Mrs. Victoria Tan, accused-appellant's mother, asserts that her son left home on June 26, 1994 and came back at about 10:00 a.m. the next day, after which some men arrived at the house and took her son with them. She remembered no one calling her son on the phone one week before June 27, 1994.[17]

Ronald Roll, a security guard of the PCI Bank branch at the corner of Banawe and Retiro Streets, testified that in the morning of June 27, 1994, he noticed a commotion a few meters away from the bank and was told by passersby that there was a carjacking. He noticed two men converging at Ubay and Retiro Streets.[18] Finally, Fernando Angeles testified that he saw accused-appellant at the casino on the night of June 26, 1994, where he introduced to him a woman named Cristy. He last saw accused-appellant at about 6:00 a.m. the next day as he was leaving the casino.[19]

Finally, SPO3 Millan Batalao testified that in June 1994, the office of the Second Special Operations Group in Camp Bagong officially had no telephone. He issued a certification to this effect.[20]

After trial, the court a quo rendered judgment, the dispositive portion of which reads:

WHEREFORE, finding the accused GUILTY BEYOND REASONABLE DOUBT for Violation of Sec. 15 Art. III in relation to Sec. (e), (f), (m), (o), Art. 1 of R.A. No. 6425, as amended by P.D. No. 1883, the Court hereby sentences the accused ANGELITO TAN Y NUBLA to suffer the penalty of Reclusion Perpetua and to pay a fine of P500,000.00 with costs against the accused.

SO ORDERED.[21]

Accused-appellant interposed this appeal alleging that:

1.] THE RULING THAT THE STATE WAS ABLE TO PROVE THE ACCUSED'S GUILT BEYOND REASONABLE DOUBT IS ERRONEOUS IN THE FACE OF INCONSISTENCIES, CONTRADICTIONS AND INCREDIBLE STATEMENTS IN THE PROSECUTION'S EVIDENCE.

a) NO PHONE CALLS WERE MADE BY THE POSEUR-BUYER TO THE ACCUSED AS PROVEN BY THE ABSENCE OF A TELEPHONE IN THE POLICE'S OFFICE.

b) THE LOWER COURT ERRED IN FINDING THAT ABALOS AND THE CONFIDENTIAL INFORMANT ARRIVED AT THE APPOINTED PLACE AT 10 A.M.; HENCE IT FAILED TO OBSERVE THAT THE BUY-BUST OPERATION/ENTRAPMENT WAS SUPPOSEDLY CONDUCTED WITH NARY AN AGREEMENT AS TO THE TIME THE SALE MUST TAKE PLACE.

c) MABANAG'S AFFIDAVIT OF ARREST (Exh. "V") RUNS COMPLETELY AFOUL WITH THE STATE'S OWN EVIDENCE; IN ADDITION, THE WITNESS/PUBLIC OFFICER IS CHARGEABLE WITH PERJURY AND/OR FALSE TESTIMONY.

d) THE TESTIMONIES OF THE STATE'S WITNESSES AND THE PHYSICAL REPORT (EXH. "S") ON THE PRESENCE OF ULTRA-VIOLET POWDER ON THE ACCUSED'S HANDS MADE BY FORENSIC CHEMIST INSP. LESLIE MAALA ARE HOPELESSLY INCOMPATIBLE WITH EACH OTHER.

e) EVEN CIRCUMSTANCES SURROUNDING THE ACCUSED'S ARREST ARE FRAUGHT WITH INCONSISTENCIES AND CONTRADICTIONS.

f) THE CONCLUSION THAT THE STATE PROVED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT BECOMES MORE TENUOUS IN THE FACE OF THE OTHER INCONSISTENCIES AND IRREGULARITIES IN ITS EVIDENCE.

2.] THE COURT A QUO'S RELIANCE ON THE PRESUMPTION OF REGULARITY IN THE OFFICIAL PERFORMANCE OF OFFICE/DUTY IS EFFICIENTLY NEGATED BY THE FALSE TESTIMONY OR PERJURY COMMITTED BY THE STATE.

3.] LIKEWISE ERRONEOUS IS THE TRIAL COURT'S DECLARATION THAT THE ACCUSED'S FRAME-UP, ALIBI OR DENIAL CANNOT BE GIVEN WEIGHT DUE TO THE ALLEGED ABSENCE OF ANY SHOWING OF ILL-MOTIVE ON THE PART OF THE POLICE.

4.] FURTHERMORE, THE COURT A QUO COMMITTED A BLUNDER WHEN IT RELIED ON THE WEAKNESS OF THE DEFENSE.

5.] FINALLY, THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED STANDS UNREBUTTED; HENCE HIS CONVICTION IS ERRONEOUS.

The Solicitor General, on the other hand, prays that the challenged judgment be affirmed in toto, contending that:

1.]

The trial court did not commit an error when it ruled that there was a buy-bust carried out with due regard to the constitutional rights of appellant and legal safeguards provided for by law.

2.]

Law enforcers are presumed to have regularly performed their duty; the trial court did not err in giving credence and weight to their testimony.

3.]

The trial court did not commit an error when the defense of denial or frame-up was not given merit; such defense can be easily concocted and is the usual defense when no other defense is available.

4.]

The trial court did not rely on the weakness of the defense as appellant's guilt was shown beyond reasonable doubt.

In almost every case involving a buy-bust operation, the accused puts up the defense of frame-up. Since the frame-up theory, like alibi, is easily concocted, the Court usually views such a claim with disfavor. In this particular case, however, accused-appellant's avowal of his innocence rings true.

The testimony given by the witnesses for the prosecution and that of the defense are diametrically opposed to each other. In resolving such conflict, which involves the credibility of witnesses, the usual rule is for this Court to respect the findings of the trial court considering that it is in a better position to decide the question, having heard

the witnesses themselves and having observed their deportment and manner of testifying during trial.[22] Nonetheless, this rule is circumscribed by well-established exceptions.[23] Thus, the factual findings of the trial court may be reversed if by the evidence or lack of it, it appears that the trial court erred.[24]

An assiduous examination of the challenged Decision shows that the trial court based its conviction of accused-appellant mainly on the following points,[25] to wit:

- 1.) Since the sale and delivery of the shabu were established by the prosecution, the illegal transaction was consummated; hence, the accused-appellant is guilty of an illegal sale of a regulated drug punishable under R.A. No. 6425, otherwise known as the Dangerous Drugs Act, as amended by P.D. No. 1683 and R.A. No. 7659, the Death Penalty Law.
- 2.) The law enforcers have in their favor the presumption of regularity in the performance of their duties especially in the light of the diligence with which the documentary requirements were fulfilled by the police in this case as well as the positive identification by the police-witnesses of the accused-appellant.
- 3.) Given significance in the trial court's factual recital is the finding that the designated poseur-buyer, SPO1 Abalos, and the confidential informant arrived and positioned themselves at the designated place of the transaction at around 10:00 a.m., while downplayed was the defense's evidence that there was no phone in Inspector Mabanag's office during the time the alleged acts were committed, which could have rendered all the alleged prior negotiations as false. Instead, it gave more credence to Mabanag's lone testimony that the phone used was a cellular handset borrowed from a friend of his.
- 4.) Accused-appellant's denials and claim of frame-up are as weak as the defense of alibi; furthermore, in the absence of proof of improper or ill motive on the part of the police against accused-appellant, the presumption is that there was no such motive and that the prosecution's evidence must be given full faith and credit.
- 5.) The evidence adduced by the defense is full of inconsistencies and conflicting testimonies. Furthermore, accused-appellant who has a P23 Million revolving fund and who realizes a P60,000.00 to P70,000.00 average monthly income does not even have an office and did not bother to explain the sources of his funds.

The elements necessary in every prosecution for the illegal sale of shabu are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[26] The Court has repeatedly held that drug pushing when done on a small-scale belongs to those types of crimes that may be committed any time and at any place.[27] The alleged sting operation in this case was, however, no ordinary run-of-the-mill buy-bust transaction as it involved a substantial quantity of the illegal drug and thus entailed careful planning and preparation.

As can be gleaned from the version of the prosecution, the alleged buy-bust operation conducted on June 27, 1994 was the culmination of supposed calls made by the confidential informant and the poseur-buyer, SPO1 Liberato Abalos, to a certain Lito, who turned out to be accused-appellant. According to the prosecution witnesses, two calls were made: first, at 1:00 p.m. of June 23, 1994, made by the confidential informant where Abalos was introduced by the informant to Lito as a friend who recently arrived from the Middle East and who was interested in buying shabu; second, at 6:00 a.m. of June 27, 1994, made by Abalos himself who was told that the shabu was ready for delivery. In both instances, the calls were allegedly made at the office of the Second Special Operations Unit of the PNP Narcotics Command at Camp Bagong Diwa, Bicutan, Taguig, Metro Manila. Thus did poseur-buyer Abalos testify on this particular point:

Q

How did you contact Alias "Lito"?

A

Through telephone, sir.

Q

Who contacted Lito?

A

The confidential informant, sir.

x x x x x x x x

Q

Where did your confidential informant call up Lito?

A

In our office, sir.

Q

Your office at Camp Bagong Diwa, Bicutan, Taguig, Metro Manila?

A

Yes, sir.

x x x x x x x x

Q

Where did Capt. Mabanag jot or write down the telephone number of Lito?

A

In his office himself because the telephone is on his table.

x x x x x x x x

Q

And was your confidential informant able to contact Lito over the telephone?

A

Yes, sir.

x x x x x x x x

Q And this telephone conversation took place in the office of Capt. Mabanag?

A Yes, sir.

x x x x x x x x

Q

The telephone used by the confidential informant was on top of the table of Capt. Mabanag, is it not?

A

Yes, sir.

x x x x x x x x

Q

On June 27, 1994, at about 6:00 o'clock in the morning, what happened, if any?

A

I called him up.

Q

You were the one who called him up?

A

Yes, sir.

Q

Where did you call him?

A

Through the telephone in our office.[28]

It, however, appears that these alleged telephone conversations never occurred. Particularly revealing on this point is a Certification dated August 1, 1995,[29] issued by Police Senior Inspector Albel Marcial Pascua, OIC of the Communications & Electronics (COMMEL) Unit of Camp Bagong Diwa,[30] Bicutan, Taguig, Metro Manila, which reads:

01 August 1995

C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that as per the records on file in this Office, no commercial telephone line/unit was installed by COMMEL personnel to Special Operation Group, NARCOM Division stationed in Camp General R. Papa Sr., Bicutan, Taguig, Metro Manila from June 1994 until this date. (emphasis supplied)

This certification is issued for whatever legal purpose it may serve best.

(sgd) ALBEL MARCIAL PASCUA

Police Senior Inspector

OIC, COMMEL NCRC

Furthermore, excerpts from the testimony of SPO3 Millan Batalao, who was Chief Lineman of the Commel Unit, disclose the following:

Q

What month did you install a local telephone line at the K-9 Narcom?

A

In January 1991, sir.

Q

This local line that you have installed at the K-9 Narcom, Camp Ricardo Papa, Bicutan, Taguig, is still functioning?

A

No, sir.

Q

Why?

A

In 1992, the cable of the telephone line broke down and up to the present, we have not yet repair[ed] [it], sir.

Q

Will you please repeat what year when the cable broke down or [was] damaged?

A

In 1991 to 1993, sir. The cable was destroyed and we did not repair. So up to now, they have no telephone.[31]

x x x x x x x x

Q

Do you know what month was that when the cable fell and got damaged?

A

In March 1993, sir.

Q

Since then the cable was not repair[ed]?

A

Yes, sir.

Q

Since then there was no telephone line [which] was install[ed] to (sic) to the office of the K-9 Narcom, now Special Operations Group, Narcom?

A

Yes, Your Honor.[32]

x x x x x x x x

COURT :

Q

You want to tell the Court that while the Narcom Rehabilitation Center has telephone connections now, including that enlisted Men's Condominium, Special Operations Group has no telephone?

A

Yes, Your Honor.

ATTY. CABACUNGAN:

Q

Why are you sure that Special Operations Group has no telephone service?

A

As Chief Lineman, I do some physical visits and I am sure that Special Operations Group do not have [a] telephone service because I pass by their office daily and it could be seen that they don't have [any] because it's an open space, sir.

Q

As Chief Linesman, Commel Unit, do you know if you have an offer to the Narcom Special Operations Group to install?

A

In 1994, when I have just come from Camp Karingal, I personally went to the Office of the Special Operations Group and talked to their officer to make the request so that we could install a telephone line in their office, sir. But up to the present, no one has come to our office from their office for such purpose.

Q

And since you have gone there to offer [the] installation of the telephone line, how many times have you visited that Special Operations Group from that time on?

A

For about four times, sir.

Q

When was the last time you have visited or inspected the Special Operations Group?

A

Only last week, sir.

Q

Why did you go to the office?

A

I received [a] subpoena from this Court and so I visited that office to be sure whether there is a telephone line there and I found out that there is none, sir.[33]

The foregoing only bolsters accused-appellant's testimonial declarations on the witness stand that on June 27, 1994, there was no telephone in the office of Capt. Mabanag. In fact, Capt. Mabanag himself told Michael Solano that there was no telephone there.[34]

The court a quo, however, turned a blind eye to all these and relied instead on the lone testimony of Capt. Mabanag that the alleged calls were in fact made through a cellular phone borrowed from one of his friends.[35]

The Court finds such reliance on Mabanag's testimony dubious and misplaced at best. It should be pointed out that other than his bare statements to this effect, Mabanag's testimony is unsubstantiated by any other proof that said phone calls were made. Indeed, no statement of account issued by the cellular phone company for the month of June was offered to show that the two calls were actually made to accused-appellant's residence. Likewise, the prosecution failed to divulge the name of Mabanag's friend or the cellular phone company. As it is, the lack of independent evidence to buttress Mabanag's declaration reduces it into a bare self-serving assertion whose probative value practically becomes nil, more so vis-à-vis well-nigh overwhelming evidence adduced to the contrary. Furthermore, if it were true that there was a cellular phone in the office on that date, the same could have also been made available to Michael Solano and accused-appellant for them to make the necessary calls. Oddly, it was not.

A circumspect scrutiny of the record also discloses that the prosecution never offered rebuttal evidence to refute the testimony of SPO3 Millan Batalao as well as the Certification dated August 1, 1995 issued by Senior Police Inspector Albel Marcial Pascua. Suffice it to state that this omission does not augur well for the cause of the prosecution. On the contrary, it points to the stark fact that there was no entrapment or buy-bust operation at all.

The litany of the prosecution's evidentiary loopholes does not end with the foregoing contradictions.

The details of the buy-bust operation as narrated by the prosecution witnesses are likewise a study in negation. They also contain strange but convenient coincidences. In the challenged decision, the lower court categorically declared that poseur-buyer SPO1 Abalos and the confidential informant arrived at the corner of Banawe and Retiro Streets on June 27, 1994 at 10:00 a.m.[36] The prosecution witnesses, however, testified that they were at the place of the buy-bust operation between 10:30 and 10:45 a.m.[37] On the matter of when the supposed exchange would take place, Abalos declared that according to their alleged telephone conversation on June 27, 1994, he, the confidential informant and Lito shall meet at the corner of Banawe and Retiro Streets "before lunch." [38] Mabanag, however, asserted that the delivery was to be made "after lunch." [39]

Other than these ambiguous references made by the said prosecution witnesses, the record is in fact bereft of any showing that there was a specific time and place agreed upon when and where the delivery was to be made. Thus, going by the prosecution's version of how the incident occurred, from 6:00 a.m. of June 27, 1994, when poseur-buyer Abalos contacted Lito to inform the latter that the sale would push through, the buy-bust operatives had the dubious luxury of choosing what time they would proceed to the designated area. However, with such uncertainty hanging over the time when actual contact was to be made with accused-appellant to consummate the sale, they amazingly picked the propitious time to be there. As a matter of fact, poseur-buyer Abalos and the confidential informant left for the designated place ahead of the two other cars whose occupants were back-up to the operation.[40] Yet, Abalos categorically declared that his car arrived at the scene at 10:45 a.m., [41] while the two back-up cars arrived at around 10:30 a.m. [42]

The strangely opportune coincidences did not stop here. After barely ten minutes of waiting, Lito, who allegedly turned out to be accused-appellant, conveniently appeared from the side of the condominium building across the street corner where the alleged transaction would take place, almost as if it were preordained or scripted. The occurrence of these events becomes especially remarkable because, by their own admissions, neither the poseur-buyer and his informant nor the back-up buy-bust operatives had even an inkling as to what specific time they would meet with the alleged drug pusher other than their vague references to the period “before lunch” or “after lunch”, whichever the case may be. Yet for all that, they astoundingly guessed the precise time Lito would turn up on the scene.

As has been pointed out earlier, drug pushing when done on a small-scale belongs to those types of crimes that may be committed at any time and at any place.[43] Not so with large-scale drug deals. The alleged sting operation in this case is no ordinary run-of-mill buy-bust transaction as it involves a substantial quantity of shabu and thus entailed the careful planning and preparation of an entrapment operation. In the case of small-time drug sales, time is irrelevant because the poseur-buyer makes the purchase on the spot. In large-scale drug transactions, however, where the amount of the drug, the purchase price thereof and the place where the sale is to be consummated are agreed upon beforehand, a predetermined time is likewise a necessity. Needless to state, this marked confusion of the prosecution witnesses on this point only further erodes their claim that the arrest of the accused-appellant is the result of a buy-bust operation.

Furthermore, when accused-appellant’s hands were examined by Forensic Chemist Leslie Maala, his fingers, palms and even the back of his hands tested positive for fluorescent powder. The report[44] of Forensic Chemist Maala in fact reveals that at the palmar side, accused’s right hand had smudges of ultra-violet powder on the forefinger at the middle portion,[45] middle finger at its tip,[46] and the ring finger at its middle portion.[47] The left hand had traces of the powder all on the tips of the fore,[48] middle[49] and ring[50] fingers. The dorsal portion[51] of accused’s right hand bore smudges of the powder.[52] Certainly, one does not use the back of one’s hands to count money.[53] Equally damaging for the cause of the State on this point is the fact that Maala’s report does not jibe with the eyewitness accounts of prosecution witnesses Abalos and Lara on how accused-appellant scrutinized and handled the dusted money. Abalos testified as follows:

Q

Did the accused bring out the boodle ... bundle of money from the envelope?

A

Yes, sir.

Q

And he brought these (2) bundles of money after he brought it out from the envelope?

A

Yes, sir.

Q

Did the accused count the boodle money after he brought it out from the envelope?

A

Yes, sir.

Q

Did he count it one by one?

A

He counted it one by one but when he noticed that it was boodle money in the middle, then he acted as if he will run away, sir.

Q

You demonstrated how you counted after the accused have brought out the boodle money, he counted by holding that was at the upper surface of the bundle, is it not?

A

Yes, sir. He held like this (witness indicating as if he is holding the boodle of money then with his left hand) and when he counted up to 3 position he saw the boodle money in the middle.

Q

When he counted this bundle of money, do I get it right that he placed those two bundles of money with his left hand at the innermost of the two (2) bundles of money?

COURT:

What do you mean innermost, Placed on the left palm?

ATTY. CABACUNGAN:

Yes and on top of the envelope with two (2) bundles of money?

A

Yes, sir.

Q

And he proceeded to count the first bundle and the surface as, and as a matter of fact, you claimed that when you proceeded to count the label of the bundle of money, was at his breast.

A

Yes, sir.

Q

And when he proceeded to count the first bundle and the surface as a matter of fact he already have (sic) counted three pieces at the surface and the first bundle also at the surface?

A

Yes, sir.

Q

And he counted it with the use of his forefinger and thumb?

A

(witness is demonstrating with his left hand holding the bundle of money with the thumb trying to push the money bill on top and then he held it with his right hand holding it towards his body that goes also with the next two (2) pieces of one thousand peso bills)

Q

You noticed that he counted with his forefinger and thumb of the right hand ?

A

Yes, sir.

Q

And when he was through counting three (3) pieces, were these three pieces that he was able to count genuine?

A

Yes, sir.[54]

Lara, on the other hand, made the following narrative:

Q

After Angelito Tan received the envelope, did Angelito Tan count the money?

A

I saw Angelito Tan looking at the contents of the envelope, sir.

Q

And you noticed that he counted the money contents of the envelope?

A

I think so because as if he was looking like this, sir (witness demonstrating as if his fourth finger (sic) counting the money inside the envelope).

Q

When Lito Tan was counting the money inside the envelope, he raised it on his breast?

A

I saw him looking at the envelope and was doing like sorting the contents of his forefinger, sir.[55]

As can be gleaned from the foregoing testimonies, the fingers used by accused-appellant in counting the money were for Abalos the thumbs and forefingers of the left and right hands while for Lara only one forefinger of a hand was used. Whether said forefinger is the left or the right is not even disclosed by the records. Assuming Abalos was telling the truth, the thumbs of either hands would have had ultra-violet powder. Maala's physical report shows that the thumbs of accused bore no traces of the powder. Assuming that Lara's version was the truth, then one hand of the accused would not have contained ultra-violet powder because the accused allegedly used the forefinger of only one hand to count the money inside the envelope with the other hand presumably holding the undusted envelope containing the marked money. Maala's report shows that both hands contained ultra-violet powder.

Curiously too, only the genuine bills and not the boodle money were examined by Maala,[56] although like the real money, they were also dusted with ultra-violet powder. This only tends to lend credence to accused-appellant's account that he was surreptitiously made to touch only the marked genuine money bills which were shoved into his hands by the police officers who accompanied him home to get some clothes.[57] If at all, the findings of the forensic chemist are even more supportive of the accused-appellant's account on this score.

The dubiousness of the claimed buy-bust operation is further underscored by the irregularities in the procedure undertaken by the arresting officers.

Oddly, of the seven genuine one thousand peso bills and the fake money which comprised the buy-bust money which were all submitted for dusting of ultra-violet powder,[58] only the genuine peso bills were submitted to the PC Crime Laboratory in Camp Crame for examination.[59] No explanation was given as to why the fake money was excluded from the examination. It is significant to note in this regard that this fact mutely but eloquently corroborates accused-appellant's testimony that he only handled the genuine one thousand peso bills and that he did so when the same were shoved into his hands while they were on their way to the PC Crime Laboratory and not during the alleged sting operation.[60]

Equally strange is the fact that accused-appellant was examined for traces of ultra-violet powder only at about 9:00 p.m., some ten hours from the time he allegedly handled the dusted buy-bust money. Furthermore, the allegedly confiscated shabu and the buy-bust money were merely placed on top of the table of Capt. Mabanag after the arrest of accused-appellant. It was only much later, at 12:00 midnight, that Lara was sent to the National Bureau of Investigation (NBI)[61] and the shabu was actually submitted therein for examination at 2:00 a.m. of June 28, 1994. Along the same vein, accused-appellant was charged with the sale of "white methamphetamine hydrochloride." [62] What the prosecution adduced and proved during trial was yellow shabu.[63]

In sum, the conveniently dovetailing accounts of the prosecution eyewitnesses, all of them police officers of the buy-bust unit, with regard to the material facts of how the crime was allegedly committed engenders doubt as to their credibility. Identical features in the testimony of witnesses can not but generate the suspicion that the material circumstances testified to by them were integral parts of a well thought-out and prefabricated story.[64] It was in fact held in one case that because of the close camaraderie that developed between the witnesses-members of the same police force to which an accused belonged, they could not be expected to testify truthfully.[65] Furthermore, their testimonies as graphically enumerated and detailed above shows only too clearly that while they testified uniformly only as to material facts, they have been forgetful or non-committal with particulars and details having relation with the principal facts. Worth remembering in this regard is *People v. Alviar*,[66] where we said that:

. . . “[i]t often happens with fabricated stories that minute particulars have not been thought of.” It has also been said that “an honest witness, who has sufficient memory to state one fact, and that fact a material one, cannot be safely relied upon as such weakness of memory not only leaves the case incomplete, but throws doubt upon the accuracy of the statements made. Such a witness may be honest, but his testimony is not reliable.”

Indeed, it has been pointedly stated in *People v. Ganan, Jr.*,[67] citing the old case of *U.S. v. Burns*,[68] that:

The experience of courts and the general observation of humanity teach us that the natural limitations of our inventive faculties are such that if a witness undertakes to fabricate and deliver in court a false narrative containing numerous details, he is almost certain to fall into fatal inconsistencies, to make statements which can be readily refuted, or to expose in his demeanor the falsity of his message.

For this reason it will be found that perjurers usually confine themselves to the incidents immediately related to the principal fact about which they testify, and when asked about collateral facts by which their truthfulness could be tested, their answers not infrequently take the stereotyped form of such expressions as “I don’t know” or “I don’t remember.”

As adverted to earlier, the claim of “frame-up” is a common and standard line of defense which is invariably viewed by this Court with disfavor, it being easily concocted and difficult to prove. Clear and convincing evidence is required to prove the defense because in the absence of proof of any intent on the part of the police authorities to falsely impute such a serious crime against accused-appellant, the presumption of regularity in the performance of official duty as well as the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect and must prevail over the claim of the accused that he has been framed-up.

However, with the evidence adduced by accused-appellant, the Court holds that he has clearly and convincingly overcome the presumption that the police authorities performed their duties in a regular and proper manner. The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant’s conviction because, “[f]irst, the presumption is precisely just that – a mere presumption. Once challenged by evidence, as in this case, xxx [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.”[69]

There can be no denying that a buy-bust operation has been considered as an effective mode of apprehending drug pushers. If carried out with due regard to constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.[70] However:

. . . this Court stated that “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 heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug

deals, the possibility of abuse is great. Thus, courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellant's guilt. It should have given more serious consideration to the pros and cons of the evidence offered by both defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.[71]

Viewed vis-à-vis the peculiar factual milieu of this case, we stress that courts are mandated to put the prosecution evidence through the crucible of a severe testing, and the presumption of innocence requires them to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused.[72]

Finally, the lower court's observation that accused-appellant had substantial sums of money "without bothering to explain the source of his vast funds"[73] is an obiter dictum and an obvious non sequitur which cannot but raise a quizzical eyebrow and elicit reproof from this Court. Aside from its irrelevancy to the issues involved in this case, it amounts to an unjustified indictment and a prejudgment by insinuation that such funds of accused-appellant are tainted because he did not disclose how they were obtained. Suffice it to state that accused-appellant is not duty-bound to explain the wherewithal of his resources because the same is not in issue in this case. Such questions on accused-appellant's finances are best threshed out in appropriate proceedings filed precisely for that purpose. If at all, the trial court's unmerited reference to accused-appellant's finances evokes the disturbing thought that he was arrested and detained for less than noble purposes by his captors because he in fact possessed such "vast sources of funds." Undeniably, there is evidence on record which more than hints at the distinct possibility thereof.

Concededly as pointed out by the lower court, the evidence of the defense has its share of inconsistencies. This, however, cannot be made to favor the cause of the prosecution. It is a well-entrenched rule in criminal law that the evidence for the prosecution must stand or fall on its own weight[74] and cannot be allowed to draw strength from the weakness of the defense.[75] Furthermore, it is a hornbook doctrine that if inculpatory facts and circumstances are capable of two or more explanations, one of which is consistent with the innocence of the accused and the other consistent with his guilt, then the evidence does not fulfill the test of moral certainty and is not sufficient to support a conviction.[76]

In sum, given the attendant circumstances, the Court entertains serious doubts as to the culpability of the accused-appellant and its mind cannot rest easy upon the certainty of his guilt.

WHEREFORE, in view of all the foregoing, the judgment appealed from is REVERSED and SET ASIDE. Accused-appellant Angelito Tan y Nubla is ACQUITTED of the crime charged against him and his immediate release from custody is ordered, unless there is another lawful cause for his continued detention. Costs de officio.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Austria-Martinez, JJ., concur.

[1] Record, p. 1.

[2] Ibid., p. 17.

[3] TSN, 11 October 1994, pp. 11-15.

[4] Ibid., pp. 20, 24, 40-41.

[5] Id., pp. 24-37.

[6] TSN, 23 September 1994, p. 38.

[7] TSN, 20 October 1994, pp. 7, 9-10.

[8] TSN, 11 November 1994, pp. 9-12.

[9] Ibid., p. 17; Physical Science Report No. R-175-94, Exhibit S.

[10] TSN, 11 November 1994, p. 34.

[11] Exhibits 5 to 5-D.

[12] TSN, 28 November 1994, pp. 19-63.

[13] TSN, 11 April 1995, pp. 67-91; TSN, 25 April 1995, pp. 15-25.

[14] TSN, 28 November 1994, pp. 67-74.

[15] TSN, 28 November 1994, pp. 67-74.

[16] TSN, 19 December 1994, pp. 39-40.

[17] TSN, 23 February 1995, pp. 10-21.

[18] TSN, 1 February 1995, pp. 33-36.

[19] TSN, 23 February 1995, pp. 10-21.

[20] TSN, 1 September 1995; Exhibit 7, Certification dated 1 August 1995 executed by Albel Pascua, Senior Police Inspector of the Commel Unit in Camp Ricardo Papa, formerly Camp Bagong Diwa.

[21] Id., p. 244.

[22] *People v. Atilano Gilbero*, G.R. No. 142005, 23 January 2002, citing *People v. Cura*, 240 SCRA 234 [1999]; *People v. Aquino*, 284 SCRA 369 [1998].

[23] Factual findings of the trial court are entitled to great weight on appeal except when: 1) the inference made is manifestly mistaken, absurd or impossible; 2) there is grave abuse of discretion; 3) the finding is grounded entirely on speculations, surmises or conjectures; 4) the judgment is based on misapprehension of facts; 5) the findings are conflicting; 6) the court in making its findings, went beyond the issues of the case and the same is contrary to the admissions of the contending parties; 7) the findings of the Court of Appeals are contrary to those of the trial court; 8) the findings of fact are conclusions without citation of specific evidence on which they are based; 9) when the court manifestly overlooked certain relevant facts not disputed by the parties and which if properly considered would justify a different conclusion; and 10) when the findings are premised on absence of evidence and are contradicted by the evidence on record (*Golangco v. CA*, 283 SCRA 493 [1997]). See also *People v. Gulion*, G.R. No. 141183, 18 January 2001, 349 SCRA 610, 620-621, citing *People v. Dizon*, 336 SCRA 54, 61 [2000].

[24] *People v. Tan*, G.R. No. 133001, 14 December 2000, 348 SCRA 116, 122, citing *People v. Lagao*, 286 SCRA 610 [1998].

[25] RTC Decision, pp. 5-11; Record, pp. 234-235, 239-243.

[26] *People v. Zheng Bai Hui*, 338 SCRA 420 [2000]; *People v. Cueno*, 298 SCRA 621 [1998].

- [27] *People v. Velasco*, 252 SCRA 135 [1996], citing *People v. Tandoy*, 192 SCRA 28 [1990] and *People v. Paco*, 170 SCRA 681 [1989].
- [28] TSN, 23 September 1994, pp. 56-69, emphasis supplied.
- [29] Exhibit 7.
- [30] Now Camp Ricardo Papa.
- [31] TSN, 1 September 1995, pp. 21-23; emphasis supplied.
- [32] *Ibid.*, pp. 25-26; emphasis supplied.
- [33] *Id.*, pp. 32-35, emphasis supplied.
- [34] TSN, 11 April 1995, pp. 85-91.
- [35] TSN, 11 October 1994, pp. 19-20; RTC Decision, pp. 10-11; Record, pp. 242-243.
- [36] RTC Decision, p. 2; Record, p. 234.
- [37] TSN, 23 September 1994, p. 26 where SPO1 Abalos said they arrived at 10:45 a.m.; TSN, 11 October 1994, p. 38 where Capt. Mabanag averred that the back-up teams arrived at around 10:30 or 10:45 a.m.
- [38] TSN, 23 September 1998, p. 78.
- [39] TSN, 11 October 1994, p. 24.
- [40] TSN, TSN, 17 October 1994, p. 52.
- [41] TSN, 23 September 1994, p. 26.
- [42] TSN, 11 October 1994, P. 38.
- [43] *People v. Velasco*, *supra*.
- [44] Exhibit S.
- [45] Exhibit 2-e.
- [46] Exhibit 2-f.
- [47] Exhibit 2-g.
- [48] Exhibit 2-b.
- [49] Exhibit 2-c.
- [50] Exhibit 2-d.
- [51] Exhibit S-1.
- [52] Exhibit 2.
- [53] *People v. Tan*, 348 SCRA 116, 124 [2001].
- [54] TSN, 3 October 1994, pp. 30-35; emphasis supplied.
- [55] TSN, 17 October 1994, pp. 67-68; emphasis supplied.

[56] Exhibits S and Q-1.

[57] TSN, 25 April 1995, pp. 7-11.

[58] Exhibit L. Letter/Request dated 27 June 1994 for dusting of ultra-violet powder on the cash and boodle money constituting the buy-bust money.

[59] Exhibits Q, Q-1 and S.

[60] TSN, 25 April 1995, pp. 15-25.

[61] TSN, 17 October 1994, pp. 30-33; Exhibit A, Request for Laboratory Examination to the NBI dated 27 June 1994.

[62] RTC Decision, p. 1; Record p. 233.

[63] Exhibit H, Certification dated 28 June 1994 issued by NBI Forensic Chemist Salud Rosales.

[64] *People v. Badon*, 308 SCRA 175, 187 [1999], citing *People v. De Castro*, 252 SCRA 341 [1996]; *People v. Madriaga, IV*, 171 SCRA 103, 126 [1989]; *People v. Agudo, et al.*, 137 SCRA 516 [1985]; *People v. Alviar*, 59 SCRA 136 [1974].

[65] *People v. Aspiras*, 330 SCRA 479 [2000].

[66] 59 SCRA 136, 158 [1974].

[67] 265 SCRA 260, 287 [1996].

[68] 41 Phil. 418 [1921].

[69] *People v. Ruiz*, G.R. Nos. 135679 and 137375, 10 October 2001, citing *People v. Pagaura*, 334 Phil. 683 [1997].

[70] *People v. Salazar*, 266 SCRA 607 [1997].

[71] *People v. Tan*, *supra*, citing *People v. Sevilla*, 339 SCRA 625 [2000]; emphasis ours.

[72] *People v. Ratunil*, 334 SCRA 721, 737 [2000].

[73] RTC Decision, p. 11.

[74] *People v. Ramil Marquina*, G.R. No. 130213, 31 January 2002, p. 14.

[75] *People v. Samson, et al.*, G.R. No. 133437, 16 November 2001, p. 17, citing *People v. Balderas*, 276 SCRA 470, 480 [1997]; *People v. Batidor*, 303 SCRA 335 [1999]; *People v. Edralin Taboga*, 6 February 2002, p. 14.

[76] *People v. Malbog*, G.R. No. 106634, 12 October 2000, 342 SCRA 620, 641, citing *People v. Ferras*, 289 SCRA 94, 108 [1998], citing *People v. Fider*, 223 SCRA 117, 134 [1993].

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