

PEOPLE OF THE PHILIPINES, PLAINTIFF-APPELLEE, VS. EMERSON TAN Y BEYAOU (BOY TAN), ANTONIO BUCE Y MARQUEZ AND RUBEN BURGOS Y CRUZ, ACCUSED-APPELLANTS.

G.R. No. 133001. December 14, 2000

Ponente: MELO, J.

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MELO, J.:

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-appellants' avowals as to their innocence ring true.

Before us for review is the decision dated February 10, 1998, of the Regional Trial Court of the Third Judicial Region (Branch 12, Malolos, Bulacan), penned by Judge Crisanto Concepcion, finding accused-appellants Emerson Tan, Antonio Buce, and Ruben Burgos guilty of violating Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended. The dispositive portion of said decision provided:

WHEREFORE, finding each of herein three (3) accused guilty as charged in the information beyond reasonable doubt as principal, there being no aggravating or mitigating circumstance found attending the commission of the offense so charged, each is hereby sentenced to suffer the penalty of reclusion perpetua and a fine of P500,000.00 as so provided in Republic Act No. 7659, Sec. 14 thereof, amending section 15, Article III of Republic Act No. 6425, as amended, and to pay the costs of the proceedings.

In the service of their sentence, each accused, being a detention prisoner, shall be credited with the full time during which he has undergone preventive imprisonment, pursuant to Art. 29 of the Revised Penal Code.

The subject methamphetamine Hydrochloride, otherwise known as "shabu," marked in evidence as Exhibit "J-5," is hereby ordered confiscated and forfeited in favor of the Government to be turned over to the Dangerous Drugs Board immediately for destruction without delay, after photographic pictures thereof are taken and attached to the record of this case.

SO ORDERED.

(Rollo, p. 39).

The Information filed against accused-appellants on July 4, 1997 charged:

That on or about the 28[th] day of April, 1997 in Meycauayan, Bulacan and within the jurisdiction of this Honorable Court, the above-named accused, confederating and mutually helping one another, did then and there willfully, unlawfully and knowingly sell and deliver approximately 886.9 grams of methamphetamine hydrochloride, otherwise known as "shabu" to an agent of the National Bureau of Investigation who posed as a poseur-buyer, in violation of the above-cited law.

Contrary to law.

(Rollo, p. 5.)

Upon their arraignment on July 29, 1997, the three pleaded "Not Guilty" to the charge. Trial thereafter ensued, with the prosecution presenting as witnesses Intelligence Agent Martin Soriano, Special Investigator Pio Palencia, and Forensic Chemist Maryann Aranas.

Their version as to the events that transpired is as follows:

NBI Intelligence Agent Martin Soriano testified that at about 4 P.M. of April 27, 1997, he met with Alice del Rosario, an informant of his, in Project 6, Quezon City. The latter apprised him of the drug trafficking activities of a certain Boy Tan in Bulacan. Immediately after receiving this information, Soriano, together with Special Investigator Pio Palencia and Intelligence Agent Allan Santiago, planned a buy-bust operation. They told del Rosario to get in touch with the aforesaid Boy Tan for a possible drug deal. Del Rosario told them that she had to speak to another person, an informant of hers, to do so. That same day, del Rosario was able to arrange a meeting with her informant, to be held at 11 P.M. of that day at the San Francisco Steak House in West Avenue, Quezon City.

At 11 P.M., Soriano and del Rosario went to said restaurant where they met the latter's informant. NBI agents Palencia and Santiago stayed outside in a car parked opposite the restaurant. Soriano haggled with del Rosario's informant until they agreed that the former would purchase a kilo of shabu from Boy Tan for P600,000.00. Soriano already had with him in a knapsack P600,000, of which two P500 bills had been dusted with fluorescent powder.

Between 1 and 1:30 A.M. of April 28, 1997, del Rosario's informant told them that he had talked to his boss, Boy Tan, on his cellular phone and that he had already arranged for the delivery of one kilo of shabu. Soriano, del Rosario, and del Rosario's informant then went out of San Francisco Steak House, boarded the latter's car, and drove to Meycauayan, Bulacan. They arrived at No. 58, Jupiter Street, Sto. Niño, Meycauayan at around 2:10 or 2:15 A.M. All this time, the vehicle was being tailed by Palencia and Santiago. Soriano, del Rosario, and del Rosario's informant went inside the house to wait for Boy Tan to deliver the shabu. Palencia and Santiago, on the other hand, parked on Neptune, a street perpendicular to Jupiter.

At around 3:45 to 4 A.M., three persons arrived, one on board a Nissan taxi; the other two, in a private car. The three entered the house where they were introduced to Soriano as Boy, Antonio, and Ruben. Boy asked Soriano if he had the money. Soriano answered, "Yes, it is here in the knapsack," unzipping the knapsack and showing the latter the money. Soriano then asked for the shabu. Boy gave him a gift-wrapped box. Soriano opened the box and found a plastic bag containing crystalline substance. After checking that it was, indeed, shabu, Soriano gave the money to Boy, who, together with Antonio, and Ruben started counting the same. When they had gotten halfway, Soriano pressed his radio transceiver, which he had concealed under his clothing, to alert Palencia and Santiago that the transaction had been consummated. He then pulled out his gun, introduced himself as an NBI agent and placed the three under arrest. Palencia and Santiago, upon their arrival, handcuffed the three suspects.

After securing the shabu and the money in a plastic bag, Soriano, Palencia, and Santiago brought the three prisoners to the National Bureau of Investigation. The three were identified at the NBI as accused-appellants Emerson Tan, Antonio Buce, and Ruben Burgos.

At around 7 P.M. of April 28, 1997, Forensic Chemist Maryann Aranas tested accused-appellants for fluorescent powder. All three tested positive, specks being found on the dorsal and palmar sides of their hands, as well as on all their fingers. The crystalline substance delivered by accused-appellants to Soriano, weighing 886.9 grams, was also found to be shabu by Forensic Chemist Aranas.

On the other hand, the defense claimed that what actually transpired is as follows:

Accused-appellant Antonio Buce testified that on the evening of April 26, 1997, he was about to turn in his taxi when he chanced upon Roy Espinosa, a long-time friend, near Sampo Restaurant in West Avenue. The latter invited him to eat at said restaurant, which Buce accepted. After eating, Espinosa invited Buce to go with him to Project 4. Agreeing, Buce called up Ronaldo Manalo, the operator of the taxi, and asked permission to return the taxi at 12 midnight rather than the usual 10 P.M. However, when Buce and Espinosa arrived at Project 4, they were accosted by several armed men and brought to a safehouse in Project 6. The armed men mauled Buce, stopping only when Buce told them that he was a mere taxi driver. Thereafter, Buce was blindfolded and led to a room. He met accused-appellants Tan and Burgos, whom he had not seen before, in the afternoon of the next day when the two were brought to the safehouse.

Accused-appellant Burgos, on the other, testified that he was a *kristo*, a bet-taker at cockfights, as well as a horserace aficionado. He was acquainted with accused-appellant Tan because the latter was also into cockfighting. He met Roy Espinosa, his kumpadre for the past ten years, on April 20, 1997 at the San Lazaro Hippodrome. Espinosa mentioned during this meeting that he was selling his owner-type jeep for P70,000.00. On April 23, 1997, Burgos met Tan at the San Juan Coliseum. He mentioned to Tan that he had a friend who was selling an owner-type jeep. Tan said that he was interested in buying the jeep so that he would have a vehicle to use when he went to cockfights, as his car usually got scratched when he used the same to go to cockfights. Burgos said that the jeep could be inspected at Espinosa's house at 58 Jupiter Street, Sto. Niño, Meycauayan, Bulacan. They agreed to go to Meycauayan on April 27, 1997 to inspect the jeep.

On April 27, 1997, however, Burgos went ahead to Espinosa's residence in Meycauayan since he had to collect a racing debt of Espinosa while Tan still had a business meeting that morning. Burgos arrived at 58 Jupiter Street at around 11 A.M. When he entered the house, he saw Espinosa handcuffed in a corner. Then several armed men who introduced themselves as NBI agents handcuffed and frisked him. They questioned him about shabu. Burgos noticed three boxes, one gift-wrapped, lying on a billiard table.

Accused-appellant Tan, on the other hand, testified that he rented a Toyota Corolla on April 26, 1997 for use in going to Bulacan. He also obtained the services of Hernando Reyes, a neighbor, to drive him there. At noon of April 27, 1997, he also fetched Melanie Martin at the latter's residence in Malabon so that the latter could serve as a guide, it being the first time for accused-appellant Tan to go to Meycauayan, Bulacan.

Tan, Martin, and Reyes arrived at 58 Jupiter Street, Sto. Niño, Meycauayan, Bulacan at around 2:30 o'clock in the afternoon. When Tan, Martin, and Reyes entered the house, they were apprehended by several armed men who claimed to be NBI agents. One of the armed men, later identified as Soriano, showed a plastic bag containing white powder to Tan and asked him if he was engaged in drug trafficking, which the latter answered in the negative. After about thirty minutes, Tan, Burgos, Espinosa, and Martin were blindfolded, brought out of the house and taken to the NBI safehouse in Project 6. It was there that they met Antonio Buce.

Soriano told accused-appellants that they can obtain their freedom for P400,000.00, advising Tan to call up his relatives to raise the money. Jose Orillaza, a businessman, testified that his friend Emerson Tan called him up at around 5 o'clock in the afternoon of April 27, 1997 to borrow P400,000.00. He was unable to give the amount to Tan because it was a Sunday and all banks were closed.

Later that afternoon Melanie Martin was allowed to go home. She was brought to SM City North Edsa. Upon being freed, Melanie went home to Malabon, arriving there at around 8 P.M. She narrated the incident to her father. Worried, Melanie's father called up his brother-in-law, Arnel Prades, and requested the latter to accompany them in reporting the matter to the authorities. Melanie also called up Emily Tan, the sister of accused-appellant

Emerson Tan, and Jose Orillaza to tell them about Emerson Tan's apprehension. Melanie Martin, along with her father and Arnel Prades, met Emily Tan and Jose Orillaza in Greenhills at around 10 o'clock in the evening of April 27, 1997. Concluding that Tan had been kidnapped, the group proceeded to Camp Crame to report the incident. Since the officer-in-charge was not around, they reported the incident to the DILG-PARAC office in Quezon City.

Meanwhile, accused-appellant Tan was unable to produce the P400,000.00 demanded by Soriano, hence it was decided that accused-appellants be brought to the National Bureau of Investigation in Taft, Manila. At around 1 o'clock in the afternoon of April 28, 1997, the three were blindfolded and brought out of the safehouse in Project 6. On the way to the NBI, accused-appellants claimed that something was smeared on their hands. Their blindfolds were removed as they were passing Welcome Rotonda. Accused-appellants arrived at the NBI at around 3 or 4 o'clock in the afternoon, where they were booked and their hands tested for fluorescent powder.

As earlier intimated, accused-appellants were found guilty by the trial court. Undaunted, accused-appellants now appeal to this Court, claiming that the trial court grievously erred in refusing to consider substantive evidence showing their innocence of the crime charged.

Accused-appellants' claims have merit.

It may be noted that the testimony given by the witnesses for the prosecution and that of the defense are diametrically opposed to each other. In resolving such conflict, dealing as it does with the credibility of witnesses, the usual rule is for this Court to respect the findings of the trial court considering that it was in a better position to decide the question, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial (*People vs. Aquino*, 284 SCRA 369 [1998]). Nonetheless, the factual findings of the trial court may be reversed if by the evidence on record or lack of it, it appears that the trial court erred (*People vs. Lagao*, 286 SCRA 610 [1998]).

This is such a case, the prosecution evidence lacking sufficient foundation to prove accused-appellants' guilt beyond reasonable doubt.

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 (*People vs. Zheng Bai Hui*, G.R. No. 127580, August 22, 2000). To prove these elements, Intelligence Agent Soriano testified that he was apprised by his informant, Alice del Rosario, about the drug trafficking activities of a certain Boy Tan. To get in touch with Boy Tan, Alice del Rosario had to contact an informant of hers. It was this informant who haggled with Soriano as to the quantity and the value of the shabu to be purchased. Likewise, it was this informant who arranged for the delivery of the shabu and who brought Soriano to Meycauayan. Yet, the NBI agents only arrested accused-appellants, not Alice del Rosario's informant. It must be noted that Soriano's informant was Alice del Rosario, not the person they met in San Francisco Steak House.

If we are to accept the veracity of Soriano's version of events, del Rosario's informant was acting as an agent of Boy Tan in selling shabu and would, therefore, be equally guilty of selling shabu as accused-appellants. Yet he was not arrested by Soriano. While he entered No. 58 Jupiter Street with Soriano and Alice del Rosario to await Boy Tan, there is nothing on the record to indicate that he escaped therefrom when Soriano announced the arrest. The only plausible reason that explains his non-arrest would be if he was also an informant of Soriano. But if he was an informant of Soriano, then there would have been no need for him to meet with Soriano and haggle with the latter. In other words, if he was an informant of Soriano, a simple phone call to Boy Tan that he had a prospective buyer would have sufficed and the group could have just as easily proceeded to Meycauayan, Bulacan to arrest the latter upon his delivery of the shabu. There would have been no need to stage an elaborate charade as

meeting at San Francisco Steak House and haggling with Soriano over the price.

Likewise, the prosecution failed to produce evidence that the two P500 bills were dusted with fluorescent powder prior to the buy-bust operation. Soriano, in his cross-examination disclosed that there had to be a written request addressed to the Forensic Chemist Division in order to have money dusted for buy-bust operations. No such request was presented in court. Moreover, upon examination under ultraviolet light, the two bills used in the April 28, 1997 alleged buy-bust operation had the date "March 5, 1997" written on them in fluorescent powder. NBI Agent Llander Sinagub testified that he brought the two P500 bills in question to the Forensic Chemist Division for dusting on March 5, 1997, or 54 days before the alleged buy-bust operation. In fact, when cross-examined as to when the money was dusted, Soriano could not recall when the P500 bills were dusted with fluorescent powder. It was also disclosed that the marked money had already been used 2 or 3 times before the April 28, 1997 buy-bust operation but no effort had been done to redust the money after they had been used. Soriano testified thus:

Q: These P500 bills presented to you earlier, you claimed that you used them 2 or 3 times other than in this case. Did you exert any effort to redust this money with fluorescent powder after they had been used on three separate cases?

A: No, sir.

(tsn, October 7, 1997, p. 31.)

Moreover, when accused-appellants' hands were examined by Forensic Chemist Aranas for fluorescent powder, their fingers, palms and even the back of their hands tested positive for fluorescent powder. Firstly, one does not use the back of one's hands when counting money. Secondly, 54 days had elapsed from the time the bills had been dusted to the time of the buy-bust operation. It confounds this Court as to how fluorescent powder could have copiously attached to accused-appellants' hands despite such an interval of time and the fact that said bills had been used in two or three previous operations without redusting.

As to the shabu allegedly delivered by Tan, this was marked by Soriano "MCS-04-27-97" after he had arrested accused-appellants. It may be noted that the delivery of the shabu allegedly occurred in the early morning of April 28, 1997. It is, thus, surprising, to say the least, that Soriano marked the bag of shabu with his initials and the date April 27, 1997, when the delivery of the shabu and the arrest was made on April 28, 1997.

All these material inconsistencies, however, pale in the light of the most damning evidence against accused-appellants' culpability. According to the prosecution, accused-appellants Tan, Buce and Burgos delivered almost a kilo of shabu to poseur-buyer Soriano in the early hours of April 28, 1997. Yet, according to the police blotter of the PARAC DILG, at 11:00 P.M. of April 27, 1997, a certain Melanie Martin reported that accused-appellant Tan had been apprehended by an unknown police unit at around 2 o'clock in the afternoon of April 27, 1997. The PARAC DILG police blotter reads as follows:

April 27, 1997 - 11:00 P.M.

APPEARANCE OF REPORTEE (Re: Alleged Drug Operation)

On the above date and time Melanie Martin y Oniol, 16, single, native of Manila and a resident of Phase 2, Blk. I, Lot 34 - Area 3, Pampano St., Dagat-Dagatan, Malabon, M.M., together with her father, Leonardo Martin and one PO3 Arnel Prades, Jr., Sta. 7, WPD, in connection with the above alleged Drug Operation wherein said reportee and her boyfriend, one Emerson Tan y Beyaoyu, 47, M, businessman, native of Manila and a resident of 17 Gen. Gutierrez St., Little Baguio, San Juan, M.M., were alleged apprehended by Drug operatives from unknown unit at Meycauayan, Bulacan.

Based on the narration of reportee they were brought at a certain place blindfolded, presumably its an office and alleged subject operative unit were digging about drug operation. The reportee was freed or allowed to go home while a man who was handcuffed and her boyfriend was left at the said office wherein reportee stated there was a one kilo of shabu and the name of one MARTIN C. SORIANO. More or less 10:00 P.M. last night her boyfriend called up and told her that he needs P400,000.00 pesos for what reason and the place where the money should be brought was not mentioned by her boyfriend.

Incident occurred 2:00 P.M., 27 April 1997, from the residence of reportee they directly drove to Meycauayan, Bulacan wherein her boyfriend were obviously awaited and was apprehended. Until this writing, 2:40 A.M., 28 April 1997, the whereabouts or location of her boyfriend is unknown.

Reportee was advised to keep in touch with this office for any development of the case.

For further investigation and follow-up.

(Original Records, p. 21-23.)

The defense presented PNP Police Officer Eduardo Quiman who testified that he was the police officer on duty at the PARAC DILG in the evening of April 27, 1997. Quiman confirmed that he was the one who had written the above-cited entry in the PARAC DILG blotter and that it was Martin who reported the same to him at 11 P.M. of April 27, 1997. Quiman's testimony stands un rebutted by the prosecution. Melanie Martin also testified that she was with Emerson Tan when the latter was arrested by Soriano and his group in the afternoon of April 27, 1997.

The above blotter entry belies Soriano's claim that Tan was arrested in the early hours of April 28, 1997 since Melanie Martin's report to the DILG of accused-appellant Tan's arrest precedes by five hours the time of Tan's arrest, as claimed by the NBI agents.

As adverted to at the very beginning hereof, the claim of "frame-up" is a common and standard line of defense which is invariably viewed by this Court with disfavor, it being capable of easy concoction and difficult to prove. Clear and convincing evidence is required to prove the defense of "frame-up" 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-appellants, the presumption of regularity in the performance of official duty, as well as the principle that findings of the trial court on the credibility of witnesses are entitled to great respect, must prevail over the claims of accused-appellants that they have been framed-up.

However, given the evidence adduced by accused-appellants, this Court holds that accused-appellants have clearly and convincingly overcome the presumption that agents Soriano and Palencia performed their duties in a regular and proper manner. In fact, it seems that Soriano and Palencia are hiding behind the mantle of regularity of official functions in pursuit of their own dubious ends. Besides, the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.

In *People v. Gireng* (241 SCRA 11 [1995]), 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 or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great." Thus, the 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 (*People vs. Pagaura*, 267 SCRA 17 [1997]). Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellants' guilt. It should have given more serious consideration to the pros and cons of the evidence offered by both the defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case (*People vs. Sevilla*, G.R.

No. 124027, September 5, 2000).

Lastly, it is hornbook doctrine that if the 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 (*People vs. Ferras*, 289 SCRA 94 [1998]).

In sum, given the evidence and the attendant circumstances, we entertain grave doubts as to the culpability of accused-appellants and our minds cannot rest easy upon the certainty of their guilt.

IN VIEW THEREOF, the appealed decision is hereby SET ASIDE and accused-appellants Emerson Tan, Antonio Buce, and Ruben Burgos are hereby ACQUITTED on grounds of reasonable doubt. Their release from detention is hereby ordered forthwith, unless they are detained for some other lawful cause.

SO ORDERED.

Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

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