PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERT SO Y CHUA, ACCUSED-APPELLANT.

G.R. No. 133861. November 22, 2001

Ponente: PUNO, J.

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PUNO, J.:

Accused-appellant Robert So y Chua was charged before the Regional Trial Court of Manila with violation of Section 15 of R.A. 6425, as amended.[1] The Information stated:

> "That on or about March 15, 1993 in Manila and within the jurisdiction of this Honorable Court the above-named accused did then and there wilfully, unlawfully and feloniously, dispense, transport, distribute, sell and deliver to a buyer without authority of law approximately two (2) kilograms of methamphetamine hydrochloride, a regulated drug, popularly known as 'shabu'."[2]

During the trial, the prosecution and the defense presented different versions of the circumstances leading to the apprehension and indictment of accused-appellant.

The evidence for the prosecution consisting of the testimonies of SPO2 Jeffrey Inciong and PO3 Danilo Solangon showed that accused-appellant was apprehended on March 15, 1993 by operatives of the Narcotics Branch of the Regional Police Intelligence Unit (RPIU) in a buy-bust operation. On March 12, 1993, the police's informant went to the RPIU headquarters and informed their Chief, Major Federico Laciste, that he had already met with the subjects, Jackson Dy and Danny Dy. Major Laciste formed a team to conduct the buy-bust operation against the subjects. The team was composed of team leader Lt. Leonardo Suan, SPO2 Jeffrey Inciong, SPO2 Laberde, SPO2 Quilala, SPO2 Agtay, PO3 Danilo Solangon, PO3 Roberto Samoy and SPO1 Rivaldo. Inciong was tasked to act as poseur-buyer, Solangon would be his companion, while the other members of the team would serve as back-up.[3]

On March 13, 1993, at 3:00 in the afternoon, Inciong, Solangon and the informant went to Pizza Hut along Buendia Avenue, near the LRT station to meet with the subjects. They waited at the parking lot of Pizza Hut. Around 4:00 in the afternoon, two men alighted from a taxi cab. The informant told Inciong that they were Jackson Dy and Danny Dy. The informant approached them and introduced them to Inciong who invited them inside the restaurant. After ordering some food, they began to negotiate. Inciong asked Jackson Dy the price of one kilo of shabu. Jackson Dy replied that a kilo of shabu would cost P700,000.00. Inciong asked if the amount could still be reduced. Jackson Dy and Danny Dy conferred with each other in Chinese. Then they told him that if he would get one kilo or more, they would lower the price to P600,000.00. Inciong told them that he would order two kilos. Danny Dy agreed and told them to prepare the money. Danny Dy whispered to the informant that they would call Inciong to inform him when the exchange would take place. After closing the deal, Jackson Dy and Danny Dy left. Inciong, Solangon and the informant returned to the headquarters around 5:00 in the afternoon and reported to Major Laciste what transpired between them and the subjects. Major Laciste instructed them to be alert for possible operation as the subjects might call anytime.[4]

On March 15, 1993, the informant went to the headquarters past 10:00 in the morning and informed Major Laciste that the subjects have called to tell him that the shabu is already available. The members of the team then prepared the boodle money[5] to be used in the buy-bust operation. Around 3:00 in the afternoon, the informant informed Major Laciste that Jackson Dy already had the stuff and was waiting at the Manila area. After coordinating with the Western Police District Command, the team proceeded to Salazar St., Binondo, Manila, in front of Fortune Hotel, where the transaction would be made. They arrived at the area around 4:00 in the afternoon. Inciong, the poseur-buyer, Solangon, his driver, and the informant parked their car near the entrance of Fortune Hotel. The other members of the team strategically positioned themselves nearby. Around 4:45 in the afternoon, Danny Dy arrived carrying a plastic bag. As he approached them, Inciong asked him if he had the stuff. Inciong then instructed him to get inside the car so that he could see the goods. They went to the back seat of the car and Danny Dy handed to him a plastic bag containing a box of Tide soap. Inciong opened the box and found one transparent plastic bag containing white crystalline substance suspected to be shabu. When he pulled out the transparent plastic bag, he found another plastic bag inside the carton which also contained the same white crystalline substance. After examining the contents of the box, Inciong told Solangon to get the money from the glove compartment. Solangon gave the boodle money to Inciong who handed it to Danny Dy. When Danny Dy examined the money, he was surprised to find out that it was not real. At that point, Solangon signaled to the other members of the team that the buy-bust has been consummated. Inciong then identified himself as a police officer and arrested Danny Dy. Solangon confiscated the buy-bust money from Danny Dy and the rest of the team closed in on them. Inciong asked Danny Dy of the whereabouts of Jackson Dy, but he remained silent.[6]

Subsequently, the team brought Danny Dy and the confiscated evidence to the headquarters. They weighed the white crystalline substance and found that it was 2 kilos. Thereafter, Inciong placed his initials on the plastic bags and turned them over to their investigator.[7]

Meanwhile, Lt. Suan, the team leader, interrogated Danny Dy on the whereabouts of Jackson Dy. The latter revealed that Jackson Dy could be found at Calumbid corner Anahaw St. in Quezon City. Major Laciste immediately dispatched the team to make a follow-up and to arrest Jackson Dy. They left the headquarters around 8:00 p.m. and reached the area past 10:00 in the evening. The place was totally dark because of power failure. After securing the area, the team, together with Danny Dy, went inside the residence of the subjects. They did not find Jackson Dy. Danny Dy, however, disclosed that the remaining shabu could be found under the bed. The team recovered three transparent plastic bags containing white crystalline substance suspected to be shabu and two empty boxes of Tide soap under the bed. The substance which weighed 3 kilos was brought to the headquarters for examination.[8]

On March 16, 1993, the RPIU submitted the white crystalline substance to the Philippine National Police (PNP) Crime Laboratory and made a request to determine whether the confiscated substance was methamphetamine hydrochloride. On March 17, 1993, the PNP Crime Laboratory furnished the RPIU a copy of the Chemistry Report[9] confirming that the substance was indeed methamphetamine hydrochloride.[10]

After receipt of the report, Danny Dy was made to undergo an inquest investigation at the Department of Justice. During the investigation, it was revealed that the real name of Danny Dy was Robert So.[11]

The defense, on the other hand, alleged that accused-appellant was only requested by a friend to bring a package to Rm. 380 of Fortune Hotel and was subsequently apprehended by police officers as the package was found to contain shabu.

The evidence for the defense showed that accused-appellant was employed in a t-shirt factory in Valenzuela, Metro Manila. In the morning of March 15, 1993, his friend, Edgar Chua, called him up and asked to meet with

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him at a canteen in Salazar St., Binondo, Manila. He acceded to the request.[12]

Around 5:30 in the afternoon, on his way to the canteen, accused-appellant saw Mercedes Lo, the wife of his co-worker, and they had some small talk. As they were talking, Chua approached him and handed to him a plastic bag. Chua requested accused-appellant to bring the bag to Rm. 380 of Fortune Hotel. Accused-appellant then excused himself and went to Fortune Hotel.[13]

As accused-appellant walked along the hallway looking for Rm. 380, somebody pulled him from one of the hotel rooms. Inside the room, he saw two Chinese-looking men with their hands tied at the back. Then, his belt was removed and used to tie his hands. The men who identified themselves as police officers asked him about a certain Jackson. He told them that he did not know Jackson. He was made to lie face down on the bed and was mauled. Thereafter, they untied his hands and fixed his collar. One of the men, whom he later identified as SPO2 Jeffrey Inciong, placed his hand over his shoulder and warned him, "Huwag kang tatakbo, babarilin kita." They went out of the room and proceeded to a car waiting for them downstairs.[14]

As he boarded the car, he was made to bow his head and was told not to look upward. They went to another place which looked like a hotel. He was brought inside a room where he was blindfolded and boxed. They made him sit, removed his shirt, tied his hands, and electrocuted him on the chest, back and shoulder. They also removed his pants and pounded his nails. They again questioned him on Jackson's whereabouts and threatened to kill him if he refused to tell them. He, however, insisted that he did not know where he was. The police also asked him who gave him the plastic bag containing the carton. He replied that it was Edgar Chua. When they asked him where they could find him, he replied that he could be found at the corner of Salazar and Ongpin Streets. One of the men said, "Sayang hindi napuntahan." They then removed his blindfold and gave him some food. He ate a little but he threw up. One of the men kicked him and ordered him to clean the mess.[15]

SPO2 Inciong asked accused-appellant where he was residing. He gave his address as 116-C Anahaw St., Project 7, Quezon City. Thereafter, they proceeded to RPIU in Camp Bagong Diwa, Bicutan, Taguig where he was detained in a small room. After half an hour, somebody came in and asked him some questions. Accused-appellant denied any knowledge about the four kilos of shabu allegedly recovered from his residence.[16]

Accused-appellant testified that while they were still at the hotel, the police officers urged him to call his relatives and seek their help so that he could be released. Accused-appellant tried to contact his uncle named Aolin but nobody answered the phone. When SPO2 Inciong asked him if he had other relatives, he replied in the negative. Accused-appellant was then brought to Bicutan. The following day, SPO2 Inciong again advised accused-appellant to borrow money from his friends to expedite his discharge. He offered to help him in exchange for monetary consideration.[17]

Accused-appellant further testified that on March 19, 1993, he withdrew from his bank account in Metrobank, Seafront Branch, Pasay City the amount of P650,000.00 which he gave to SPO2 Inciong. Not satisfied, the police asked for more. They asked for an additional P500,000.00. On March 22, 1993, he made another withdrawal in the amount of P310,000.00 which he also gave to SPO2 Inciong. As accused-appellant failed to produce the entire amount of P500,000.00, they told him that they would file a case against him for drug pushing.[18] Accused-appellant was detained in Bicutan for several months before he was transferred to the City Jail.[19]

Giving credence to the testimony of the principal witnesses, SPO2 Inciong and PO3 Solangon, the trial court found accused-appellant guilty of the charge. Although the trial court found that accused-appellant was a victim of a shake down by the police officers who arrested him, it nonetheless ruled that such fact did not affect the credibility of their testimonies. The trial court reasoned that there was no indication in the record that SPO2

Inciong or any member of the team which participated in the operation had attempted to extort money from accused-appellant before, during or immediately after his arrest. It was only after their discovery of accused-appellant's bank deposit that they pressed him to give them P960,000.00. The trial court thus sentenced accused-appellant to suffer the penalty of reclusion perpetua and to pay a fine of P30,000.00. The dispositive portion of the decision states:

> "WHEREFORE, this Court finds the accused Robert So y Chua, guilty beyond reasonable doubt of the crime of Violation of Section 15 of R.A. 6425, as amended by R.A. 7659, involving two kilograms of shabu and is sentenced to suffer the penalty of reclusion perpetua.
>
> SPO4 Olaveros Nesperos of the PNP Crime Laboratory, Camp Crame, Quezon City, to whom the shabu in question with a total weight of 5,900 grams was entrusted for safekeeping, is ordered to turn over the same to the Dangerous Drugs Board in Intramuros, Manila for proper disposition, and to submit to this Court proof of compliance herewith within three days from notice hereof.
>
> Let the commander of the Regional Police Intelligence Unit, PNP South CAPCOM, Camp Bagong Diwa, Bicutan, Taguig, Metro Manila, and Director General Recaredo Sarmiento, PNP, National Headquarters, Camp Crame, Quezon City, be furnished with copies of this decision for whatever action they may deem proper to take on the matter concerning the shake down of the accused by SPO2 Inciong and his unidentified cohorts in the Regional Police Intelligence Unit, PNP South CAPCOM.
>
> SO ORDERED."[20]

In this appeal, accused-appellant raised the following assignment of errors:

> "(1)
>
> The trial court erred in convicting accused-appellant for the crime of drug pushing under Section 15 of the Dangerous Drugs Act (R.A. 6425, as amended) despite the failure of the prosecution to establish the guilt of the accused beyond reasonable doubt.
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> (2)
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> The trial court erred in not giving weight/credence to the testimonies of witnesses for the defense who have shown to be impartial witnesses.
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> (3)
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> The trial court erred in not considering the shake done (sic) on the accused wherein his money from the bank were (sic) illegally taken by SPO2 Inciong and others as not affecting the veracity of the testimonies of said SPO2 Inciong and PO3 Solangon."[21]

We find no merit in the appeal.

In the prosecution of the offense of illegal sale of prohibited drugs, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.[22] The trial court found accused-appellant guilty of the crime charged based on the testimony of SPO2 Jeffrey Inciong and PO3 Danilo Solangon who caught accused-appellant in flagrante delicto during a buy-bust operation. In giving weight to their testimony, the trial court relied on the presumption that a police officer has regularly performed his official duty.

Accused-appellant, however, assails the credibility of SPO2 Inciong and PO3 Solangon as they were found to have extorted money from accused-appellant in exchange for the non-filing of a case against him.

We are not unmindful of the anomalous practices of some law enforcers in drug-related cases such as planting evidence, physical torture and extortion to extract information from suspected drug dealers or even to harass civilians. Thus, the Court calls for vigilance and caution in trying drug-related cases lest an innocent person be made to suffer the unusually severe penalties for drug offenses. Trial courts are admonished to always require precise and convincing testimony in cases involving buy-bust operations. Competent and effective handling of a case by the prosecution is particularly urgent in drug-related offenses.[23] The prosecution is required to adduce adequate evidence to prove the guilt of the accused beyond a shadow of doubt and not simply rely on the presumption of regularity. The presumption of regularity does not, by itself, constitute proof of guilt beyond reasonable doubt. It cannot, by itself, support a judgment of conviction.[24] Under our Constitution, an accused, no matter how despicable the crime for which he may have been charged, still enjoys the presumption of innocence. And this presumption prevails over the presumption of regularity of the performance of official duty.[25] We reiterate our ruling in People vs. Doria:[26]

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> It is thus imperative that the presumption, juris tantum, of regularity in the performance of official duty by law enforcement agents raised by the Solicitor General be applied with studied restraint. This presumption should not by itself prevail over the presumption of innocence and the constitutionally-protected rights of the individual. It is the duty of courts to preserve the purity of their own temple from the prostitution of the criminal law through lawless enforcement. Courts should not allow themselves to be used as an instrument of abuse and injustice lest an innocent person be made to suffer the unusually severe penalties for drug offenses.
>
> We therefore stress that the 'objective' test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the 'buy-bust' money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement."

In the case at bar, there is evidence to show that the police officers exacted money from accused-appellant after his arrest in order to facilitate his immediate discharge. This notwithstanding, we examine the entirety of the prosecution evidence and find the same to be sufficient to convict accused-appellant. A careful scrutiny of the account of SPO2 Inciong and PO3 Solangon of their initial meeting with accused-appellant, their negotiations about the purchase price and the amount of shabu to be delivered, the actual delivery of the stuff, the follow-up operation at the residence of accused-appellant, and the seizure of the additional three kilograms of shabu at his residence shows marks of truthfulness. Their testimonies are clear, straightforward and full of details that belie fabrication. They also remained consistent even on cross-examination. The alleged inconsistencies in the testimonies of these two witnesses pointed out by accused-appellant in his Brief are not supported by the records. Their testimonies are further bolstered by the physical evidence consisting of the five kilograms of shabu which were all presented as evidence before the court.[27]

The police extortion does not necessarily negate the fact that accused-appellant committed the offense. The evidence shows that the shake down was carried out only after the commission of the offense. It appears that the

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police informant had previously known accused-appellant to be dealing in illegal drugs. He arranged the meeting and introduced accused-appellant to SPO2 Inciong who posed as an interested buyer. During the meeting on March 13, 1993 at Pizza Hut at Buendia Avenue, Pasay City, accused-appellant willingly offered to sell two kilos of shabu to SPO2 Inciong for the price of P600,000.00 per kilo. The buy-bust operation was consummated on March 15, 1993 when accused-appellant delivered the shabu to the poseur-buyer in Binondo, Manila. The police arrested accused-appellant after he handed the shabu to SPO2 Inciong. During his detention, the police discovered that accused-appellant had an account at Metrobank, Seafront Branch. It was at that time when the police urged accused-appellant to withdraw from his bank account and deliver the money to them in exchange for his release and exoneration. It is clear from the foregoing that the offense had already been consummated before the police exacted money from accused-appellant.

Accused-appellant argues that the Chemistry Report presented by the prosecution is inadmissible as evidence as the person who actually conducted the examination was not presented to testify before the court. This Chemistry Report confirmed that the white crystalline substance seized by the police in the buy-bust operation is methamphetamine hydrochloride. The argument, however, is untenable as accused-appellant failed to timely object to the presentation and offer of such evidence. Accused-appellant cannot, at this stage of the proceedings, object to the admissibility of said evidence.

Accused-appellant contends that it is contrary to human experience that he immediately agreed to sell two kilos of shabu to SPO2 Inciong on their first meeting and, without any precaution, carried the plastic bag containing the stuff and handed the same to SPO2 Inciong on their second meeting. He also points out that there is no proof that the boodle money was indeed handed to accused-appellant as the police did not apply fluorescent powder to the buy-bust money which should have marked the hands of accused-appellant.

These contentions merit no consideration. The Court has noted many times that drug pushers have become increasingly daring in the operation of their illicit trade and have not hesitated to act openly, almost casually and even in scornful violation of the law, in selling prohibited drugs to any and all buyers. In fact, drugs are sold even to police officers nowadays, some of whom are users, if not pushers themselves.[28] There is also no requirement that the police must apply fluorescent powder to the buy-bust money to prove the commission of the offense. What is material is the delivery of the prohibited drug to the buyer which, in this case, was sufficiently proved by the prosecution through the testimony of the poseur-buyer and the presentation of the article itself before the court.

Finally, we are not convinced by the assertion of accused-appellant that he was merely requested by a friend to deliver the plastic bag, the contents of which he does not know, to Room 380 of Fortune Hotel and that he was subjected to physical torture after he was apprehended by the police. The defense of denial or frame up, like alibi, can easily be concocted and has to be well established.[29] We hold that accused-appellant's claim that he was subjected to physical torture by the police does not find support in the evidence on record. The Medical Examination Report[30] dated March 17, 1993 issued by the PNP South Capcom Command Medical Service shows that all the vital signs of accused-appellant at the time of the examination were normal and there were no indications of physical torture on his body.

We find, therefore, no reason to disturb the judgment of the trial court giving more weight to the prosecution evidence and finding accused-appellant guilty beyond reasonable doubt.

IN VIEW WHEREOF, the appeal is DISMISSED. The decision appealed from is AFFIRMED. Let the Secretary of the Department of Interior and Local Government and the Director General of the Philippine National Police be furnished with a copy of this decision for appropriate action concerning the alleged extortion committed by SPO2

Inciong and his companions against accused-appellant during the latter's detention.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Dangerous Drugs Act of 1972.

[2] Original Records, p. 1.

[3] TSN, February 23, 1994, pp. 5-7; TSN, July 20, 1994, p. 5.

[4] Id., pp. 7-10; Id., pp. 6-12.

[5] Exhibits "A" and "B".

[6] Id., pp. 11-21; Id., pp. 12-22.

[7] Id., pp. 22-23.

[8] Id., pp. 24-28.

[9] Exhibit "K".

[10] TSN, February 23, 1994, pp. 28-30.

[11] Id., p. 31.

[12] TSN, October 25, 1994, pp. 5-6.

[13] Id., pp. 7-8; TSN, April 20, 1995, pp. 5-8.

[14] Id., pp. 8-10; TSN, November 16, 1994, pp. 3-5.

[15] TSN, November 16, 1994, pp. 6-11.

[16] Id., pp. 11-14.

[17] Id., pp. 14-16.

[18] TSN, September 29, 1997, pp. 31-37; Exhibit "5".

[19] TSN, November 16, 1994, p. 16.

[20] Decision, Criminal Case No. 93-118518, Rollo, p. 29.

[21] Appellant's Brief, Rollo, p. 63.

[22] People vs. Uy, 327 SCRA 335 (2000); People vs. Chen Tiz Chang, 325 SCRA 776 (2000); People vs. Castro, 274 SCRA 115 (1997); People vs. Bay, 222 SCRA 723 (1993).

[23] People vs. Cruz, 215 SCRA 339 (1992).

[24] People vs. Pagaura, 267 SCRA 17 (1997).

[25] People vs. Briones, 266 SCRA 254 (1997).

[26] 301 SCRA 668 (1999).

[27] Exhibits "D", "E", "F", "G" and "H"; TSN, September 24, 1994, pp. 32-33.

[28] People vs. Alegro, 275 SCRA 216 (1997).

[29] People vs. Sy Bing Yok, 309 SCRA 28 (1999).

[30] Original Records, p. 13.

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