TERESITA SUSON Y BANZON AND ANTONIO FORTICH Y SILANG, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. NO. 152848. July 12, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, which seeks the reversal of the Decision[1] of the Court of Appeals dated 30 October 2001 in CA-G.R. CR No. 22775 which affirmed the decision of the Regional Trial Court (RTC), Branch 25, Danao City, in Criminal Case No. DNO-1532, and its Resolution[2] dated 26 February 2002 denying petitioners Teresita B. Suson and Antonio S. Fortich's Motion for Reconsideration.

On 16 April 1996, petitioners Teresita B. Suson and Antonio S. Fortich, a.k.a. Jojo Muslim, were charged with Violation of Section 15, Article III, in relation to Section 21, Article 4 of Republic Act No. 6425, otherwise known as The Dangerous Drugs Act of 1972.[3] An Amended Information was filed on 2 May 1996.[4] On 2 July 1996, a Second Amended Information[5] was filed, the accusatory portion of which reads:

> That on or about April 12, 1996 at 3:30 o'clock in the afternoon more or less in S. Duterte St., Suba, Danao City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused in a buy bust operation, conspiring, confederating together and mutually helping one another, did then and there willfully, unlawfully and feloniously sell and deliver three (3) packs of white crystalline substance containing metamphetamine hydrochloride, commonly known as "shabu," a regulated drug, weighing .7 grams to informant decoy SPO2 Alicia A. Patiño for a total consideration of P2,400, without any permit from the proper authorities.[6]

The case was filed before Branch 25 of the RTC of Danao City and docketed as Criminal Case No. DNO-1532.

Petitioner Suson, together with Andres Camargo, was also charged with Illegal Possession of Shabu and Firearm in Criminal Cases No. DNO-1533 and No. DNO-1534 before the same court.

When arraigned, petitioners, assisted by counsel de oficio, pleaded "Not Guilty."[7] Thereafter, the three cases were tried jointly.

The facts which we find supported by evidence, are summarized by the Office of the Solicitor General and are quoted by the Court of Appeals:

> After conducting a few days earlier a surveillance on appellant Teresita Suson's house located at S. Duterte St., Suba, Danao City, the Narcotics Team of Cebu City, in coordination with the Danao City Police Station, proceeded to the said house in the afternoon of April 12, 1996 in order to make a "buy-bust" operation. SPO2 Alicia Patiño, a member of the Narcotics Team who met Suson on April 10, 1996 in order to buy shabu and who was told by the latter to come back on April 12, 1996, posed as the poseur-buyer.
>
> SPO2 Patiño, who was then positioned outside the gate of Suson's house, called the latter in order to buy

> shabu. Answering the call, Suson went out of the house and, after receiving the total sum of P2,400.00 in marked bills, went back inside. Moments later, appellant Antonio Fortich approached SPO2 Patiño and handed to her three (3) packs of shabu.
>
> Subsequently, Fortich went across the street and joined other persons who were playing mahjong. On the other hand, after SPO2 Patiño had made a pre-arranged signal, the police authorities accompanying her rushed towards Fortich and arrested him.
>
> The packs of shabu which were handed to SPO2 Patiño were submitted to the PNP Crime Laboratory which, after examining the same, found that the said items were "positive" of the regulated drug known as Methampetamine Hydrochloride.
>
> Later in the afternoon of the same date, and after the police authorities were able to secure a Search Warrant (for the search of shabu from the house of Suson) from the trial court, said search warrant was implemented and the police companions of SPO2 Patiño, searched, in the presence of the barangay captain in the area, Suson's house. Thereupon, Suson was apprehended. The police was also able to recover, among others, the marked bills amounting to P1,180.00 from Suson's possession.[8]

Petitioners contend that no buy-bust operation occurred and that the evidence - shabu and firearm - allegedly confiscated in their home was planted evidence.

On 30 September 1998, the trial court rendered its decision convicting petitioners of the crime of illegal sale of shabu in Criminal Case No. DNO-1532, while acquitting petitioner Suson and Andres Camargo of the crimes of illegal possession of shabu and firearm in Criminal Cases No. DNO-1533 and No. DNO-1534. The decretal portion of the Decision reads:

> WHEREFORE, for proof beyond reasonable doubt, the Court finds accused Antonio Fortich and Teresita Suson in Criminal Case No. DNO-1532 GUILTY beyond reasonable doubt for Violation of Section 15, Article III, in relation to Section 21, Article IV of Republic Act 6425, as amended, and in conformity with Supreme Court doctrine in Pp. vs. Simon, 234 SCRA 555, each accused is hereby sentenced to suffer an indeterminate penalty of SIX (6) MONTHS and ONE (1) DAY of prision correccional as minimum to SIX (6) YEARS of prision correccional as maximum. The amount of P1,180 being the fruit of a crime is hereby confiscated in favor of the government
>
> For lack of sufficient evidence, the Court hereby ACQUITS accused Andres Camargo and Teresita Suson from the crime of illegal possession of shabu and firearm, as charged in Crim. Case Nos. DNO-1533 and 1534. The amount of P34,770 and one (1) cellular phone marked "SIEMEN" are hereby ordered returned to said accused Teresita Suson.[9]

The trial court declared that petitioners, by their concerted action, sold shabu powder to poseur-buyer SPO2 Alicia Patiño for P2,400.00, and that an hour after the sale, SPO3 Alejandro Biñan confiscated or recovered from petitioner Suson marked money used in the buy-bust operation amounting to P1,180.00 whose serial numbers corresponded to the serial numbers recorded in the log book kept by SPO3 Biñan as marked money used in said operation.

On 29 October 1998, petitioners appealed to the Court of Appeals via a Notice of Appeal.[10]

On 30 October 2001, the Court of Appeals affirmed in toto the RTC's decision in Criminal Case No. DNO-1532 and dismissed, for lack of merit, petitioners' appeal.[11] The Motion for Reconsideration[12] filed by petitioners was denied[13] on 26 February 2002.

Petitioners appeal their conviction before this Court grounded on the following:

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- THE DECISION OF THE HONORABLE COURT OF APPELAS AS WELL AS ITS RESOLUTION DENYING A MOTION FOR RECONSIDERATION THEREOF IN CA-GR. CR NO. 22775 AND SUBJECT HEREOF IS A TOTAL DEPARTURE FORM (sic) ESTABLISHED DOCTRINES, EXPRESS LEGAL PROVISIONS AND PRINCIPLES OF LAW; THUS SAID APPELLATE COURT, IN SUSTAINING THE FINAL ORDER OF THE TRIAL COURT, GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO A WANT, IF NOT A TOTAL LACK, OF JURISDICTION;

- THE HONORABLE COURT OF APPEALS ALSO REVERSIBLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN IGNORING AND DEFYING THE OVERWHELMING EVIDENCE FOR PETITIONERS (ACCUSED-APPELLANTS THEREAT) OR A LACK OF EVIDENCE TO PROVE THE GUILT OF THE ACCUSED (HEREIN PETITIONERS) BEYOND REASONABLE DOUBT WHICH SHOW THE GLARING VIOLATION OF SAID COURT IN ITS DECISION OVER THE BASICS OF HEREIN PETITIONERS; THUS AN OTHERWISE EVIDENTIARY ASPECT OF THE CASE IS IN QUESTION, THE JUDGEMENT (sic) UNSUPPORTED BY THE EVIDENCE IF NOT CONTRARY THERETO, BECOMES NOW A LEGAL QUESTION THAT CALLS FOR THE INTERVENTION OF THE HONORABLE SUPREME COURT.

The Supreme Court accords, as a general rule, conclusiveness to a lower court's findings of fact except when: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly an error or founded on a mistake; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on a want of evidence and/or contradicted by evidence on record.[14] Especially in criminal cases where the accused stands to lose his liberty by virtue of his conviction, the Court must be satisfied that the factual findings and conclusions of the lower courts leading to his conviction must satisfy the standard of proof beyond reasonable doubt.[15]

Petitioners ask us to review the findings of fact made by the trial court alleging that their conviction was not supported by, and even contrary to, the evidence per its own findings of facts.

In showing the error of the lower court, petitioners quoted the Transcript of Stenographic Notes and its findings contained in its decision. It quoted part of the testimony of SPO2 Patiño as follows:

A

There was somebody, a male person who got outside and later I identified that male person named Jojo who was the one who delivered the thing to me.

Q

What was the thing delivered by Jojo to you?

A

Three (3) packs of shabu.

Q

Then after that, what did Jojo tell you, if any?

A

The gate was already opened when he delivered to me the shabu and after he delivered the shabu to me he went across [the road], and I asked him, where are you going, and he answered to me that he will play mahjong. . .[16]

The lower court's decision partially reads:

> Prosecution would want to show that after surveillance conducted on April 8, 1996 in the residence of accused Antonio Fortich and Teresita Suson the Narcom in coordination with the Danao City Police conducted a buy-bust operation on accused. That with SPO2 Alicia Patino acting as poseur/buyer, a pre-arranged signal in the manner of combing her hair was agreed when actual bust-buying of shabu is consummated. That said Alicia Patino agreed to buy shabu from accused Teresita Suson who received the amount of P2,400.00 and a few minutes thereafter said accused Teresita Suson came back with a male companion named Antonio Fortich who delivered to Alicia Patino three (3) packs of shabu. Said accused Antonio Fortich then crossed the street towards where mahjong was played about 40 meters away. Upon the agreed signal, SPO3 Eduardo Misa proceeded to where Antonio Fortich was located and arrested him. Then followed by other raiding companions to the house of Andres Camargo where accused Teresita was located and arrested her. . .[17]

After going over the Transcript of Stenographic Notes and the Decision of the RTC, it behooves us to have a second look on the evidence on record. It appears that the RTC's finding as to who delivered the shabu to SPO2 Patiño contradicts, or is not in accord with, SPO2 Patiño's testimony. From the testimony of SPO2 Patiño, it is clear that it was only petitioner Fortich who delivered to her the 3 packs of shabu. On the other hand, the RTC narrated that after petitioner Suson received the payment for the shabu and went inside her home, she came back out with petitioner Fortich who delivered or handed over the shabu to SPO2 Patiño. Petitioner would like to capitalize on the RTC's gaffe in making its findings of fact.

The question is: Can this inadvertence on the part of the RTC exonerate petitioners and cause the reversal of their conviction?

We do not think so.

It must be made clear that what controls are the statements in the Transcript of Stenographic Notes and not the findings of fact which is merely taken from the Transcript of Stenographic Notes and from other documentary exhibits. This Court is not prevented from going into the Transcript of Stenographic Notes to verify if the statements made by the witnesses are correctly integrated in the decision. If there are inaccuracies, this Court can rectify the same and be the basis of our decision.

In the case at bar, petitioners were convicted for Violation of Section 15 (Sale), Article III, in relation to Section 21 (Conspiracy), Article IV of Republic Act No. 6425, as amended. Many times, this Court has already ruled that a buy-bust operation is a form of entrapment which has repeatedly been accepted to be a valid means of arresting violators of the Dangerous Drugs Law.[18] In every prosecution for illegal sale of prohibited or regulated drugs, the following elements must be established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[19] In proving that the sale was consummated, the prosecution presented the poseur buyer - SPO2 Patiño.

The testimony of SPO2 Patiño on the sale of the shabu is as follows:

> PROSECUTOR GEROMO: continues
>
> Q
>
> After the briefing on April 12, 1996, what happened next?
>
> A
>
> After our lunch we proceeded here in Danao City all narcom Officers.
>
> Q:
>
> Can you tell the Court about how many were you who came here in Danao City?

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A:

Maybe ten (10) or twelve personnel.

Q:

After that, what happened next?

A:

We contacted Major Castro.

Q:

Did you have a conference with Major Castro at that time?

A:

We have a conference but it was not done at the headquarters. We had our conference but it was not done at the headquarters, we had our conference on a secret place.

Q:

Now after your conference with Major Castro on April 12, 1996, what happened after that?

A:

At about 3:30 p.m. we proceeded to the house of Tessie and our back up were positioned on strategic places and I went to the gate of Tessie and I called her up.

Q:

After you called up Tessie, were you able to have a conversation with her?

A:

She went outside the gate and we have our conversation.

Q:

What did you tell Tessie if any?

A:

I told her I wanted now to buy shabu because she told me to return on that very day.

Q:

Did you tell her, how much are you going to buy?

A:

I told her I will buy shabu worth P2,400 and then she told me that the pack worth P800.00 each.

Q:

Then after that, what did Tessie tell you if any?

A:

She received the money and she told me to just wait for a while and she went inside her house and I just waited

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for her.

Q:

After you waited for her, what happened next?

A:

There was somebody, a male person who got outside and later I identified that male person named Jojo who was the one who delivered the thing to me.

Q:

What was the thing delivered by Jojo to you?

A:

Three (3) packs of shabu.

Q:

Then after that, what did Jojo tell you, if any?

A:

The gate was already opened when he delivered to me the shabu and after he delivered the shabu to me he went across, and I asked him, where are you going, and he answered to me that he will play mahjong game.

Q:

What made you [ask] that question to Jojo?

A:

My purpose in asking Jojo is to be sure that at the time of the arrest he will be there and he could be located.

Q:

How far was the place where Jojo went across from the house where you were at the time?

A:

Just across the street where the house is situated when he played mahjong.

Q:

After Jojo told you that he will play mahjong, what did you do?

A:

I opened my bag and I placed the shabu inside the bag and I took my comb and I comb my hair because that was our pre-arranged signal.

Q:

Now after giving your pre-arranged signal, what happened?

A:

My companions rushed towards Jojo.

Q:

Was Jojo arrested?

A:

Yes, sir, we let Jojo return to the house and got inside the house.[20]

From the categorical and straightforward testimony of SPO2 Patiño, the elements of the crime charged have been sufficiently established. Her testimony was corroborated on material points by SPO3 Eduardo Misa who acted as a back-up during the buy-bust operation. SPO3 Misa testified:

Q

What did you do in order to effect the buy bust operation?

A

After the selling and buying were consummated, Alicia Patiño made a pre-arranged signal, and on that occasion I was not the only back-up. We were many, including the PNP of Danao City.

Q

At about what time was the buy bust operation conducted?

A

More or less, at 3:30 o'clock in the afternoon, sir.

Q

Were you able to see the accused in this instance?

A

Yes, sir.

Q

Who of the two accused did you see first?

ATTORNEY CAÑETE:

I object, Your Honor, there is no showing that it's either the two accused who gave.

COURT:

Saw, saw. Whom did you see.

ATTORNEY CAÑETE:

Whom did you give the money?

COURT:

No, no. Whom did you see first?

PROSECUTOR GEROMO:

Whom did you see first?

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WITNESS continues:

A

It was Tessie, sir.

COURT (TO WITNESS):

Q

From where?

A

From the house of a certain "Camargo."

COURT continues:

Q

She came from the house of Camargo?

A

Yes, Your Honor.

COURT (TO PROSECUTOR GEROMO):

Proceed.

PROSECUTOR GEROMO continues:

Q

From the place where you were positioned, did you see also the poseur-buyer, Alicia Patiño?

A

Yes, sir, they were talking to each other.

Q

After they were talking to each other, can you tell the Court what transpired next?

A

Alicia Patiño gave money to her and she went to the house, and it was Jojo who delivered the shabu to Alice.

Q

After that shabu was delivered, what happened next?

WITNESS continues:

A

Jojo went away and went across the road, and thereafter, Alicia Patiño gave the pre-arranged signal.

PROSECUTOR GEROMO continues:

Q

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After that pre-arranged signal. . . by the way, what was that pre-arranged signal?

A

By combing her hair, sir.

Q

After you saw that pre-arranged signal given by Alicia Patiño, what did you do?

A

We immediately approached Jojo who at that time was in the mahjong place because they wanted to play mahjong, but they were not able to play mahjong because we arrested him.[21]

The testimonial evidence was supported by the physical evidence on record. The three packs[22] -- containing a white crystalline substance weighing .7 gram -- which were received from petitioner Fortich, were turned over to the PNP Crime Laboratory, Camp Sotero Cabahug, Cebu City, for analysis. During trial, these three packs were submitted and marked in evidence. Police Inspector Myrna Areola, PNP Forensic Analyst, testified that the substance contained in the packs were positive for Methamphetamine Hydrochloride or shabu. Said finding was indicated in Physical Science Report No. C-263-96.[23]

Petitioners contend that the RTC decision is contrary to law and jurisprudence. They claim that despite the failure of the raiding/searching team to submit an inventory of the confiscated articles to the court which issued the search warrant, the court still considered the shabu in convicting them.

This contention is untenable.

The instant case involves the sale of shabu (Crim. Case No. DNO-1532) which is separate and distinct from Criminal Cases No. DNO-1533 and No. DNO-1534 involving Illegal Possession of Shabu and Firearm. In the two latter cases, petitioner Suson and accused Camargo were acquitted. It is in this case for illegal possession of shabu that the court stated that the raiding team allegedly did not make an inventory of the confiscated drugs. Nowhere in the decision did the court say that the lack of inventory referred to the case for the sale of shabu (Criminal Case No. DNO-1532). In the case for the sale of shabu which is now pending before this Court, no inventory or return of search warrant is required because the shabu involved was not confiscated by virtue of a search warrant; same was obtained by the poseur- buyer because it was delivered to her by petitioner Fortich after payment was made to petitioner Suson. As previously discussed, the shabu sold to the poseur-buyer was subjected to laboratory examination and presented in court as evidence which clearly proves the identity of the drug. Thus, petitioners' reliance on the statement of the RTC that grave doubt is entertained as to the genuineness of the specimen for the searching team's failure to submit an inventory thereof, is misplaced.

To further cast doubts on the validity and regularity of the buy-bust operation, petitioners argue that the marked money allegedly used in the buy-bust was not officially marked since the same was merely recorded in a private logbook.

Such argument will not help petitioners get out of the predicament they are in. The recording of marked money used in a buy-bust operation is not one of the elements for the prosecution of sale of illegal drugs. The recording or non-recording thereof in an official record will not necessarily lead to an acquittal as long as the sale of the prohibited drug is adequately proven. In the case at bar, SPO2 Patiño, the poseur-buyer, testified on the circumstances regarding the sale of the shabu for which petitioners were charged and convicted. Settled is the rule that in the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject

of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.[24] What is material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.[25] In the instant case, both were sufficiently shown by the prosecution.

Petitioners deny that a buy-bust operation took place and claim that the evidence against them is planted evidence.

We are not convinced. The defense of denial or frame-up, like alibi, has been viewed with disfavor for it can easily be concocted and is a common defense ploy in most prosecutions for violation of the Dangerous Drugs Act. [26] Denial is a weak form of defense, particularly when it is not substantiated by clear and convincing evidence just like in the case before us.

All told, the illegal sale of drugs having been established beyond reasonable doubt, we are constrained to uphold petitioners' conviction.

Finally, we determine the proper imposable penalty. The proper penalty to be imposed for the illegal sale of 0.7 gram of shabu would be a prision correcional, pursuant to the second paragraph of Section 20 of Republic Act No. 6425, as amended by Section 17 of Republic Act No. 7659 and in consonance with the doctrine laid down in People v. Simon.[27] Further, applying the Indeterminate Sentence Law, the imposable penalty should be the indeterminate sentence of SIX (6) MONTHS OF ARRESTO MAYOR, as the minimum, to FOUR (4) YEARS AND TWO (2) MONTHS OF PRISION CORRECCIONAL, as the maximum.

WHEREFORE, the decision of the trial court in Criminal Case No. DNO-1532 convicting petitioners Teresita B. Suson and Antonio S. Fortich for the sale of 0.7 gram of "shabu" is hereby AFFIRMED, with the MODIFICATION that the penalty of imprisonment to be imposed should be the indeterminate sentence of SIX (6) MONTHS OF ARRESTO MAYOR, as minimum, to FOUR (4) YEARS AND TWO (2) MONTHS OF PRISION CORRECCIONAL, as maximum.

SO ORDERED.

Panganiban, (Chairman), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

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[1] CA rollo, pp. 111-117; Penned by Associate Justice Bernardo P. Abesamis with Associate Justices Ramon A. Barcelona and Perlita J. Tria Tirona, concurring.

[2] Id. at 137.

[3] Records, p. 1.

[4] Id. at 10.

[5] Id. at 19.

[6] Id. at 19.

[7] Id. at 20-21.

[8] CA rollo, pp. 112-113.

[9] Records, p. 170.

[10] Id. at 214.

[11] CA rollo, p. 116.

[12] Id. at 122-130.

[13] Id. at 137.

[14] Enriquez v. People, G.R. Nos. 119239 & 119285, 9 May 2000, 331 SCRA 538, 552.

[15] Dela Cruz v. People, G.R. No. 150439, 29 July 2005, 465 SCRA 190, 206.

[16] TSN, July 17, 1996, p. 8.

[17] RTC Decision, pp. 8-9; Records, pp. 164-165.

[18] People v. Corpuz, 442 Phil. 405, 414 (2002).

[19] People v. Batoctoy, 449 Phil. 500, 515 (2003).

[20] TSN, July 17, 1996, pp. 7-9.

[21] TSN, January 22, 1997, pp. 20-23.

[22] Exhs. E, E-1 and E-2

[23] Exhs. A, A-1 and A-2.

[24] People v. Astudillo, 440 Phil. 203, 224 (2002).

[25] People v. Chen Tiz Chang, 382 Phil. 669, 684 (2000).

[26] People v. Ahmad, G.R. No. 148048, 15 January 2004, 419 SCRA 677, 695.

[27] G.R. No. 93028, 29 July 1994, 234 SCRA 555, 574.

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