

RAMIL CABUGAO Y SISON, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 158033. July 30, 2004

Ponente: PUNO, J.

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PUNO, J.:

This is a petition for review of the decision[1] and resolution[2] of the Court of Appeals in CA-G.R. No. CR No. 24578, affirming the decision[3] of the Regional Trial Court of Dagupan City, Branch 41, which found the petitioner Ramil S. Cabugao guilty of violation of Article III, Section 15 of Republic Act No. 6425, as amended.

The information against the petitioner Cabugao reads as follows:

That on or about the 12[th] day of March, 1999, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, RAMIL CABUGAO y Sison, did then and there, wil(l)fully, unlawfully and criminally, sell and deliver to a customer Shabu weighing more or less .5 gram contained in a small plastic sachet, without authority to do so.

Contrary to Article III, Sec. 15, R.A. 6425, as amended.[4]

The petitioner pleaded “not guilty” upon arraignment.[5]

During the trial, the prosecution presented the testimonies of SPO2 Augusto P. Domingo,[6] Police Superintendent Theresa Ann B. Cid, and SPO1 Rolando Lomibao.

SPO2 Domingo testified that he has been a policeman in Dagupan City from January 25, 1999. On March 12, 1999, at around 8:40 p.m., the members of the Task Force Anti-Drug of the Dagupan City Police Station conducted a buy-bust operation at M.H. Del Pilar Street in Dagupan City, against the petitioner Cabugao after fifteen (15) days of surveillance. Fifteen (15) minutes before the buy-bust operation, he arranged to sell shabu to the petitioner. During the operation, he approached the petitioner who was seated on a bench in front of Caliman Lodge along M.H. Del Pilar Street. He gave the petitioner two P100 bills which he previously marked with his signature. He arrested the petitioner after the latter handed to him a small plastic sachet of shabu. At the time of the arrest, the other members of the task force were scattered at a distance of 3 to 5 meters away from him. The petitioner was then brought to the police station where the incident was recorded in the police blotter.[7]

SPO1 Rolando Lomibao, a member of the Dagupan City Police Station’s Task Force Anti-Drug, also testified for the prosecution. He said he has been in service as a policeman since 1987. He recalled that in the evening of March 12, 1999, he, together with SPO2 Domingo, SPO1 Danilo Frias, SPO1 Allan Daus, and their team leader Senior Police Inspector Romeo Caramat, went to M.H. Del Pilar Street to hold a buy-bust operation. SPO2 Domingo acted as the poseur buyer in the operation as he was the one who arranged with the petitioner the sale of shabu. They knew the location of petitioner Cabugao because of their assets. When they arrived at M.H. Del Pilar Street, the petitioner was standing in front of Caliman Lodge. SPO2 Domingo approached the petitioner and handed to him two marked P100 bills. At that time, he was about three meters away from them. SPO2 Domingo

arrested the petitioner after the latter gave him the plastic sachet containing shabu. He helped in the apprehension of the petitioner. He bodily searched the petitioner and found a 9-inch dagger in his possession. They turned over the petitioner to the police station and requested for a laboratory examination of the contents of the plastic sachet.

Superintendent Wendy Garcia Rosario, the Chief of Police of the Dagupan City Police Station, sent a letter-request^[8] to the Philippine National Police (PNP) Crime Laboratory of Lingayen, Pangasinan, for an examination of the contents of the sachet handed over by the petitioner. He also reported to the Dangerous Drugs Board the buy-bust operation.^[9] SPO2 Domingo and SPO1 Rolando Lomibao, as members of the task force, executed a joint affidavit regarding the incident.^[10]

Theresa Ann Bugayong-Cid, a forensic chemist at the PNP Crime Laboratory of San Fernando, La Union, testified that she examined the specimen and found it to contain methamphetamine hydrochloride (shabu).^[11]

For his part, the petitioner denied that a buy-bust operation was conducted against him by the police. His testimony was buttressed by witnesses Teresa Azurin, Maria Luz Villamil, and Romeo Cabugao.

Teresa Azurin was a waitress of the “turo-turo” (eatery) at the sidewalk along M.H. Del Pilar Street where the incident took place. She testified that on March 12, 1999 at around 8:30 in the evening, two men came to their eatery, bought cigarettes and asked for candies. One of them said he would get his money to pay for the candies. To her surprise, the man drew his gun and poked it to her lone customer, the petitioner Cabugao. The two men then frisked the petitioner but found nothing from him. They handcuffed the petitioner and forcibly took him away. She was shocked by the incident and went inside the “eskenita” (alley). The following morning, the parents of the petitioner dropped by their eatery and paid the food bill of their son. She gave them a receipt.^[12]

Maria Luz Villamil is the sister of the petitioner’s classmate Victorino Villamil. She testified that on March 12, 1999, at 8:30 in the evening, she was at a store along M.H. Del Pilar Street when she saw a man approach the petitioner Cabugao while the latter was eating. She was about “two(-)arm(s) length”^[13] away from the petitioner at that time. The man poked a gun at the petitioner and frisked him. Thereafter, some men forced him to go with them. She heard the petitioner say: “why, what is my fault”; he also asked if they have a search warrant. He begged to be allowed to telephone his parents but was refused. He called on the people around him to inform his parents, telling them his address and telephone number. She went to the address given by the petitioner and informed his parents of the incident.^[14]

The petitioner Cabugao, 32 years old, testified that while he was eating at a sidewalk store at M.H. Del Pilar Street on March 12, 1999 at around 8:30 in the evening, SPO1 Domingo suddenly poked a gun at him and warned him “Don’t move or else I will shoot you.” On the other hand, SPO1 Lomibao ordered him to raise his hands. He was bodily frisked but nothing was found on him. He was handcuffed and pulled to an owner-type jeep. He resisted as they did not have a warrant of arrest but to no avail. He begged to be allowed to call his parents but was refused. He then shouted for help so the people present would know what was happening. He was kicked while a certain SPO1 Allan Daus fired his gun. He was then brought to the police station, specifically to Senior Inspector Romeo Caramat. He was forced to sign a blank paper but he did not. After that, he was incarcerated in the city jail. He denied that a buy-bust operation took place and that a sachet of shabu and a dagger were recovered from his possession. He said that before the incident or on March 12, SPO2 Domingo and SPO1 Lomibao asked him to act as an asset in apprehending two of his neighbors suspected to be drug pushers. He agreed, but before he could help them, the suspects were arrested by other members of the Dagupan City Police Station. He asked for their forgiveness but they warned him: “the time will come that you (the petitioner) will have your day.”

Romeo Cabugao, 63 years old, the father of the petitioner, testified that after Villamil informed them of the March

12, 1999 incident, he, together with his wife, immediately went to M.H. Del Pilar Street. They talked to some people in the area, including witness Azurin who related to them in detail the incident. The next day, they paid the food bill of P30.00 incurred by the petitioner, for which an unofficial receipt was issued by Azurin. He declared that before the incident, SPO2 Domingo and SPO1 Lomibao frequented their house looking for his son, Ramil. The two wanted his son to act as an asset to apprehend suspected drug pushers living at the back of their house. He advised his son to refuse as the two police officers have questionable background. SPO1 Lomibao has been involved in drug pushing while SPO2 Domingo has been found guilty of acts of lasciviousness and dismissed from the service.

He also testified that his son was also charged with violation of Batas Pambansa Blg. 6 or illegal possession of deadly weapon. The charge was dismissed for the repeated failure of SPO2 Domingo and SPO1 Lomibao to appear in court despite due notice. A certified true copy of the resolution[15] of the Summary Hearing Officer of the PNP Regional Office I imposing a one-rank demotion against SPO1 Lomibao, an authenticated copy of the decision[16] of the Regional Director of the PNP Regional Office I dismissing SPO2 Domingo from the PNP, and the order[17] of the Municipal Trial Court in Cities of Dagupan City, Branch 1, dismissing the case against the petitioner for illegal possession of deadly weapon, were marked and submitted as exhibits for the defense. The information[18] filed against the two neighbors suspected of drug pushing, Evangeline Mendoza and Dave Doe, and the order[19] of the Regional Trial Court of Dagupan City, Branch 40, convicting Evangeline Mendoza upon her plea of guilty for violation of Article III, Section 16 of R.A. No. 6425, as amended, were also offered as exhibits.

After trial, the trial court convicted petitioner Cabugao, to wit:

WHEREFORE, the accused is found guilty beyond reasonable doubt for violation of Art. III, Section 15, RA 6425, as amended, and is hereby sentenced to suffer the penalty of six (6) months, as the minimum to four (4) years, two (2) months and one (1) day, as the maximum, and to pay the costs.

SO ORDERED.[20]

The petitioner appealed to the Court of Appeals which, however, affirmed his conviction on November 22, 2002. His motion for reconsideration was also denied.

Undaunted, the petitioner Cabugao filed this petition and submits the following assignment of errors:

I

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE INCONSISTENT AND INCREDIBLE STATEMENTS OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT ERRED IN GIVING CREDENCE TO THE PROSECUTION WITNESSES' ASSERTION THAT THERE WAS A BUY-BUST OPERATION.

III

THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 15, ARTICLE III OF REPUBLIC ACT 6425, WHEN THE GUILT OF THE LATTER WAS NOT PROVEN BEYOND REASONABLE DOUBT.

We find the petition impressed with merit.

The decisions of both courts below failed to take into account vital pieces of evidence that engender serious doubt

on the guilt of the petitioner.

First, we shall consider the documentary evidence of the defense which cannot but erode the credibility of prosecution witnesses SPO2 Augusto Domingo and SPO1 Rolando Lomibao. We refer to: (a) the authenticated copy of the Order of Police Chief Superintendent Velasco dated February 28, 1997 showing that SPO2 Domingo was found guilty of grave misconduct for acts of lasciviousness and ordered dismissed from service; and (b) the certified true copy of the Resolution of Police Senior Inspector Sotero Lucas Soriano, Jr. dated December 8, 1997 showing that SPO1 Rolando Lomibao was convicted of grave misconduct when he was found positive of metabolite (marijuana) and demoted from the rank of SPO1 to PO3.

The respondent, through the Office of the Solicitor General (OSG), tries to minimize the significance of these pieces of documentary evidence. It contends that they are hearsay evidence because they are not certified and were only identified by the petitioner's father, Romeo Cabugao.[21] It also argues that the demotion of SPO1 Lomibao and the dismissal from service of SPO2 Domingo have no bearing on the culpability of the petitioner.[22]

We disagree.

The contention of the respondent that the subject documents are uncertified is erroneous. Under the Rules of Court, when the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.[23] The Rules does not require that the certification should be in a particular form. The four-page Resolution dated December 8, 1997 contains a stamped certification signed by Police Inspector David U. Ursua of the Legal Service, PNP Regional Office I of Parian, San Fernando, La Union.[24] The three-page Decision dated February 28, 1997 has the handwritten authentication of Police Inspector Mario L. Aduan, also from the same office, on each and every page.[25] They ought to satisfy the requirement of the Rules on certification.

Moreover, the respondent did not raise the hearsay objection when the subject documents were offered in evidence by the defense. When the father of the petitioner was asked during direct examination if he had proof that SPO2 Domingo was dismissed from service and that SPO1 Lomibao was involved in drug activities, the prosecution objected on other grounds, i.e., that "the line of questioning is now irrelevant and immaterial" and that "(t)his is not (sic) the character of the complainant which is in issue." [26] When the subject documents were marked as exhibits, the prosecution again did not raise any objection. When the documents were formally offered in evidence, the respondent once more did not object on the ground of hearsay. The prosecution objected on the ground that the documents are "off-tangent to the issue in this case." [27]

The Rules of Court requires that grounds for objection must be specified, whether orally or in writing.[28] The result of violating this rule has been spelled out by this Court in a number of cases. In *Krohn vs. Court of Appeals*, [29] the counsel for the petitioner objected to the testimony of private respondent on the ground that it was privileged but did not question the testimony as hearsay. We held that "in failing to object to the testimony on the ground that it was hearsay, counsel waived his right to make such objection and, consequently, the evidence offered may be admitted." In *Tan Machan vs. De la Trinidad*, [30] the defendant assailed as error the admission of plaintiff's book of account. We rejected the contention and ruled that an appellate court will not consider any other ground of objection not made at the time the books were admitted in evidence. In the case at bar, the respondent did not assail in the trial court the hearsay character of the documents in question. It is too late in the day to raise the question on appeal.

At any rate, these documentary pieces of evidence cannot be cavalierly dismissed as irrelevant. They have a material bearing on the credibility of the prosecution witnesses, SPO2 Domingo and SPO1 Lomibao. SPO2

Domingo has been dismissed from the service as of February 28, 1997. At the time of the incident on March 12, 1999, he was no longer a policeman and yet misrepresented himself as one. On the other hand, SPO1 Lomibao has been found guilty of drug use. Their credibility as truth tellers leaves much to be desired.

Furthermore, the participation of SPO2 Domingo in the alleged buy-bust operation when he was no longer a member of the police force speaks ill of the regularity of the operation. It is unusual for SPO2 Domingo to be given the role of poseur buyer when he was at the time a dismissed policeman. As a dismissed policeman, he is not entitled to the presumption of regularity in the performance of official duty. Yet this presumption was used as a crutch to convict the petitioner.

Second, there is a major inconsistency in the testimonies of SPO2 Domingo and SPO1 Lomibao. The petitioner stressed that the two policemen could not agree on the reason that prompted them to conduct the buy-bust operation. SPO1 Lomibao testified that they were tipped by their informants. In contrast, SPO2 Domingo declared that they conducted a 15-day surveillance prior to the operation and that he personally made a pre-arrangement with the petitioner to buy shabu 15 minutes prior to the alleged operation. No informer was involved in the operation.

The pertinent excerpts of their testimonies follow:

SPO2 Domingo:

COURT:

Q: Before you conducted the buy-bust, where did you made (sic) that pre-arrangement?

A: I acted as poseur buyer, your Honor.

Q: But before that, where did you make that arrangement?

A: In that same place, your Honor.

Q: How many days before the buy-bust operation?

A: More or less 15 minutes, your Honor.[31]

On the other hand, SPO1 Lomibao testified:

Q: Arriving at M.H. del Pilar Street of (sic) March 12, 1999, what happened?

A: SPO3 Domingo who acted as pusher-buyer (sic) approached Ramil Cabugao, ma'(a)m.

x x x

Q: You said that SPOe (sic) Augusto Domingo acted as pusher-buyer (sic), what did he actually do?

A: He approached Ramil Cabugao and handed (to) him P200.00 bills, ma'(a)m.

Q: What happened?

A: And have arrangement with Ramil Cabugao and asked Ramil Cabugao if he (Cabugao) could sell (to) him P200.00 of shabu, ma'(a)m.

Q: At the time SPO3 Augusto Domingo was transacted (sic) with accused Ramil Cabugao being a pusher-buyer (sic), how far were you from the two?

A: I was more or less three meters away, ma'(a)m.[32]

During cross-examination, Lomibao testified:

Q: You have no previous agreement with Ramil Cabugao that you will meet him in front of the Caliman Lodge in (sic) that night?

A: None, sir.

Q: How did you know that Ramil Cabugao was there when you have no agreement with him?

A: We have informants and assets that gave information with (sic) us, sir.[33]

Just recently, in *People vs. Ong*,^[34] we held that it is the duty of the prosecution to present a complete picture detailing the buy-bust operation - - - 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 subject of sale. Failing in this duty, the buy-bust operation will be greeted with furrowed brows.

Second, the story of the prosecution that a dagger was found in the possession of the petitioner further crushed the credibility of their witnesses. SPO1 Lomibao testified that he bodily searched the petitioner and found a 9-inch dagger. In contrast, SPO2 Domingo never testified that a dagger was found from the petitioner. Several witnesses for the defense categorically declared that no dagger was found during the body frisk of the petitioner.

The records show that the charge for violation of Batas Pambansa Blg. 6 or illegal possession of dangerous weapon against the petitioner was dismissed due to the repeated failure of SPO2 Domingo and SPO1 Lomibao to appear before the court despite due notice. This repeated failure strengthens the impression that the prosecution story about the dagger taken from the petitioner is false. The falsity is not of little significance. A witness who manufactures that kind of a lie that could lead to the long time incarceration of the victim does not merit credence.

Third, the documentary and testimonial evidence showing ill motive on the part of the police officers who witnessed against the petitioner cannot be shunted aside.

The petitioner claims that SPO2 Domingo and SPO1 Lomibao had reason to frame him up for he repeatedly refused to become their police asset for the arrest of certain neighbors believed to be drug pushers. He alleged that because of his refusal, other police officers were able to arrest the suspects ahead of SPO2 Domingo and SPO1 Lomibao. As result, other police officers were promoted instead of SPO2 Domingo and SPO1 Lomibao.^[35] His testimony was corroborated by his father, Romeo Cabugao.

The prosecution did not rebut these allegations establishing the ill motive of SPO2 Domingo and SPO1 Lomibao. Their testimonies cannot therefore be taken hook, line and sinker.

Finally, we note that the testimonies of defense witnesses Azurin and Villamil were not given any significance in the decisions of the courts below. In fact, they were not even discussed. Of importance is the testimony of Azurin who witnessed the entire incident – from the time the police officer approached the petitioner up to the time he was handcuffed and carried away. Her testimony has all the earmarks of truth. The incident took place in a small, sidewalk eatery where there was only one table. The petitioner was then the lone customer and Azurin attended to his order. She testified that the petitioner was merely eating and was not doing anything wrong when arrested by the policemen, viz:

Q: After the two men came and something happened(,) that is the time you left?

A: Not yet, ma'(a)m.

Q: Did you not say during direct examination that when something happened you were shocked and you left and you went to "eskenita"?

A: After he was poked with a gun and (they) handcuffed him(.) (T)hat was the time I left, ma'(a)m.

x x x

Q: Now, according to you(.) you did not see anything that they got from Ramil Cabugao?

A: Yes, ma'(a)m.

Q: You believed that Ramil Cabugao did not do anything wrong, is that it?

A: I did not say that, ma'(a)m.

Q: You said that you have witnessed since the time Ramil Cabugao arrived in (sic) your store you did not see him do anything wrong in your store?

A: Yes, ma'(a)m.

x x x

Q: How far were you when these policemen frisked Ramil Cabugao?

A: I was about one and a half meter away, ma'(a)m.

Q: Which took place first(.) the frisking of the body of Ramil Cabugao or the poking of the gun?

A: The poking of gun, ma'(a)m.

Q: And they handcuffed him?

A: They frisked him, ma'(a)m.

Q: The poking of the gun was first made by the policemen?

A: Yes, ma'(a)m.

Q: And then they handcuffed him?

A: The handcuff was the last, ma'(a)m.[36]

We find Azurin to be an unbiased witness. She has no relation to the petitioner. She was a waitress in the eatery where the incident took place. She testified at the risk of inviting the ire of police officers whose influence could very well affect their livelihood and well-being.

It is well-settled that conviction must rest upon the strength of the evidence of the prosecution and not on the weakness of the evidence for the defense.[37] The prosecution's evidence, resting mainly on the testimonies of two police officers whose authority and credibility are highly doubtful, cannot sustain the conviction of the petitioner.

IN VIEW WHEREOF, the petition is GRANTED. The assailed decision and resolution of the Court of Appeals affirming the decision of the Regional Trial Court of Dagupan City, Branch 41, are REVERSED and SET ASIDE.

Petitioner is ACQUITTED of the crime of violation of Article III, Section 15 of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended. Cost de oficio.

SO ORDERED.

Austria-Martinez, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

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- [1] Rollo, pp. 83-91.
- [2] Id. at 97.
- [3] Id. at 28-32.
- [4] Records of the Regional Trial Court, p. 1.
- [5] Id. at 11.
- [6] The records also refer to Domingo's rank as "SPO3."
- [7] Exhibit "C"; Folder of Exhibits, p. 4.
- [8] Exhibit "B"; Id. at 3.
- [9] Exhibit "D"; Id. at 5.
- [10] Exhibit "E"; Id. at 6.
- [11] Physical Science Report No. D-226-99 presented as Exhibit "G" for the prosecution.
- [12] Exhibit "1"; Folder of Exhibits, p. 10.
- [13] TSN dated October 14, 1999, p. 9.
- [14] Id. at 2-14.
- [15] Exhibit "3"; Folder of Exhibits, pp. 14-16.
- [16] Exhibit "4"; Id. at 18-20.
- [17] Exhibit "5"; Id. at 21.
- [18] Exhibit "6"; Id. at 22-23.
- [19] Exhibit "7"; Id. at 24.
- [20] Rollo, pp. 31-32.
- [21] Brief for the Appellee in the Court of Appeals, p. 15; Id. at. 78.
- [22] Comment, p. 7; Id. at 123.
- [23] Rule 130, Section 7.
- [24] Folder of Exhibits, p. 17.
- [25] Id. at 18-20.
- [26] TSN dated December 13, 1999, p. 5.

[27] Records of the RTC, p. 102.

[28] Rule 132, Section 36.

[29] 233 SCRA 146 (1994).

[30] 3 Phil. 684 (1904).

[31] TSN dated June 1, 1999, p. 16.

[32] TSN dated August 10, 1999, pp. 4-5.

[33] Id. at 17.

[34] G.R. No. 137348, June 21, 2004.

[35] Rollo, p. 21.

[36] TSN dated October 11, 1999, pp. 15-17.

[37] People vs. Tan, 323 SCRA 30 (2000).

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