PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PHILIP DILAO Y CASTRO, ACCUSED-APPELLANT.

G.R. NO. 170359. July 27, 2007

Ponente: GARCIA, J.

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GARCIA, J.:

Under automatic review is the May 26, 2005 Decision[1] and September 16, 2005 Resolution[2] of the Court of Appeals (CA) in CA-G.R. C.R.-H.C. No. 00920, affirming in toto the February 27, 2003 Joint Decision[3] of the Regional Trial Court (RTC) of Caloocan City, Branch 127, in Criminal Case Nos. C-65963 and C-65964, finding appellant Philip Dilao y Castro guilty of violating Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The Case

On July 31, 2002, in the RTC of Caloocan City, two (2) separate Informations were filed against accused-appellant charging him, in the first, with violation of Section 5, Article II, of R.A. No. 9165. Docketed in the same court as Criminal Case No. C-65963, the first Information[4] alleges, as follows:

> That on or about the 19[th] day of July 2002, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there wilfully(sic), unlawfully and feloniously sell and deliver to PO1 ROLANDO DE OCAMPO who posed as buyer, METHYLAMPHETAMINE HYDROCHLORIDE (SHABU) weighing 0.06 grams, a dangerous drug, without the corresponding license or prescription therefor, knowing the same to be such.
>
> CONTRARY TO LAW.

The other Information,[5] docketed as Criminal Case No. C-65964, charges accused-appellant with violation of Section 11, Article II, also of R.A. No. 9165, allegedly committed in the following manner:

> That on or about the 19[th] day of July 2002, in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without the authority of law, did then and there willfully (sic), unlawfully and feloniously have in his possession, custody and control METHAMPHETAMINE (sic) HYDROCHLORIDE (SHABU) weighing 0.07 grams, knowing the same to be a dangerous drug under the provisions of the above-cited law.
>
> CONTRARY TO LAW.

Criminal Case No. C-65964 was originally raffled to Branch 120 of the court, while Criminal Case No. C-65963 to Branch 127 thereof. On arraignment, accused-appellant, assisted by counsel, pleaded "Not Guilty" to both charges. Thereafter, and on motion of appellant's counsel, the two (2) cases were consolidated and assigned to Branch 127, after which a joint trial ensued.

Presented by the prosecution as its evidence were the testimonies of four (4) police officers belonging to the Drug Enforcement Unit of Caloocan City Police Station and that of the forensic chemist, plus the marked money and

the plastic sachets of "shabu."

The Evidence

The People's version of the incident is well laid out in the People's Brief[6] filed by the Office of the Solicitor General, to wit:

> On July 19, 2002, around nine o'clock in the evening, a police informer called up the [DEU] Unit, Caloocan City Police Station, and "[spoke] to PO2 Rolando de Ocampo [who was told] " that an alias Philip was rampantly selling shabu along Pangako St., Bagong Barrio, Caloocan City. The informer also identified the drug pusher as Philip Dilao y Castro, herein appellant.
>
> PO2 de Ocampo relayed the said information to their Chief, Captain Jose Valencia, who told him to verify the information. PO2 de Ocampo again spoke to the informer on the phone and asked how they could entrap appellant. xxx.
>
> PO3 Rodrigo Antonio informed Capt. Valencia about the conversation between the informer and PO2 de Ocampo. Acting thereon, Capt. Valencia instructed PO3 Antonio to form and head a team to conduct a surveillance and "buy-bust" operation. Aside from PO3 Antonio, the team was composed of PO2 Ferdinand Modina and PO1 Joel Rosales as back-up, and PO2 de Ocampo as poseur-buyer. Capt. Valencia provided the P100 bill to be used as "buy-bust" money with serial number ZX 985203. PO2 de Ocampo marked the money with his initials, RDO, and the date, 07/19/02. The team had their operation blottered. Then, they proceeded to the target area ...and arrived thereat around 10:15-10:20 p.m.
>
> PO3 Antonio's team was met by the informer at a burger machine near the target area. PO2 de Ocampo was then accompanied by said informer to appellant. Meanwhile, the rest of the members of the team positioned themselves in strategic places nearby.
>
> The informer pointed to appellant who was standing outside a billiard court along Pangako St., Bagong Barrio, Caloocan City. Then, they approached appellant and PO2 de Ocampo was introduced to him as a buyer of shabu. PO2 de Ocampo then addressed appellant, "Pare, pa-iskor ng piso," and handed him the marked money. Appellant seized him up ... and then got a plastic sachet containing a white crystalline substance ....
>
> After the exchange, PO2 de Ocampo examined first the contents of the plastic sachet and then gave the pre-arranged signal ... to show that the "buy-bust" operation was completed. Thereafter, he introduced himself to appellant as a police officer and told him: "Pare, pong ka na," meaning he was already caught, while the rest of the team closed in on them.
>
> PO2 de Ocampo recovered the marked money and P200 more in different denominations from appellant while PO2 Modina recovered another plastic sachet containing a white crystalline substance. PO2 de Ocampo asked appellant where he got the P200 but he was not given a reply. He then informed appellant of his constitutional rights ....
>
> Appellant was turned over to ... PO3 Fernando Moran, together with the seized articles. In the presence of PO2 de Ocampo and PO2 Modina, PO3 Moran placed the initials "PCD" on the specimens.
>
> On even date, Capt. Valencia requested for laboratory examination of the seized articles. Subsequently, PO2 de Ocampo and PO2 Modina executed a "Pinagsamang Sinumpaang Salaysay" about the incident.
>
> P/Insp. Erickson Lualhati Calbocal, forensic chemist of the Philippine National Police, Crime Laboratory, Camp Crame, conducted a laboratory examination on said specimens and found the same positive for methylamphetamine hydrochloride. His findings are contained in Chemistry Report No. D-323-02. (Words in brackets added.)

For its part, the defense presented the following: appellant himself and Jose Bandico.

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Denial and alleged frame-up were appellant's main exculpating line. In his Brief,[7] appellant summarized the version of the defense as follows:

> xxx. At about 8:00 to 9:00 o'clock p.m. of July 19, 2002, he [appellant] was playing billiard opposite alias "Joker" at the billiard hall xxx located along Pangako St., Bagong Barrio, Caloocan City. He and his companions were surprised when ... police officers led by PO3 Antonio suddenly appeared ... [and] instructed all persons there numbering [8] including his friend companion Socrates Manalad alias "Sote". They told them, "WALANG TATAKBO MAY TAWAG SA AMIN MAY NAGBEBENTA NG SHABU DITO", and ... individually frisked them. Nothing illegal were recovered from all of them. Thereafter, six (6) of them were allowed to leave, leaving behind himself and Manalad who were handcuffed and made to board one of the two (2) owner-type vehicles, parked near the North Diversion Road. While the jeep was running, he and Manalad asked the operatives: "WALA KAMING KASALANAN, ANO BANG KASALANAN NAMIN?" to which PO3 Antonio retorted: "KUNG GUSTO NINYONG MAKAWALA KAYO MAGPALIT ULO KAYO". He initially protested but upon being told by PO3 Antonio: "OKAY KAHIT WALA KAYONG KASALANAN MATUTULUYAN KAYO, NGAYON KUNG AYAW NINYONG MATULUYAN PALIT ULO NA LANG KAYO". He was made to understand, that was an order for them to point to the police other persons in exchange for their release ..... He pretended to have agreed to this proposal xxx. The police officers stopped the owner-type vehicle at the corner of Evangelista St. and EDSA, Caloocan City, near the Toyota Motors and let him alight. His handcuff was removed. PO3 Antonio and PO2 Modina then asked him the name of the drug pusher he was supposed to point. In response, he mentioned a fictitious name, one alias "JETT" ..... Then, the police officers remarked: "O SIGE PAGKATAPOS... PAG NATAPOS ANG TRABAHO NA TO PUWEDE NA KAYONG UMUWI". They made him board again the vehicle and they proceeded to Katarungan Street.
>
> Upon arrival thereat, his handcuff was removed. As he planned, he immediately fled but the police officers pursued and cornered him .... His captors got provoked and took turns in slapping and mauling him. He was brought first to the Ospital ng Kalookan where he was supposedly physically examined [then] taken to the DEU, Caloocan City Police Station. xxx. At the DEU, the police informed him that he could have been freed if not for the fact that he fooled them (DAHIL PINAGOD MO KAMI") hence, he was charged for Violation of Sections 5 and 11 of the Dangerous Drugs Law. At around 11:00 o'clock in the evening of the same date, while he was inside the DEU detention cell, he was investigated by the police investigator. The next day, July 20, 2002, Manalad, was released. At about 3:00 o'clock [p.m.] of that day, he was brought before the Inquest Prosecutor who conferred only with PO2 Modina and PO2 De Ocampo without even bothering to examine him about the incident.
>
> He denied the charges leveled against him .... He explained that he first saw PO2 Modina when he was allowed to alight the jeep at Toyota Motors, EDSA and that he saw PO2 De Ocampo only during the inquest. He admitted that he had no previous quarrel or misunderstanding with the arresting police officers ... who he came to know only when he was arrested.
>
> He was unable to file any complaint against the concerned police officers for the physical injuries inflicted on him and for filing fabricated charges against him as he has been detained since January [July] 19, 2002. (Word in bracket supplied).

JOSE BANDICO alias "Joker" substantially corroborated the testimony of appellant on the ownership of the billiard hall, the fact of the latter's arrest on July 19, 2002 and that nothing illegal was taken from appellant when frisked by the police in the hall. Alias "Joker" also testified about the accused playing rotation billiard with him since 2:00 p.m. and how the police officers, after the arrest, even got the P260.00 bet.

The Trial Court's and the CA's Ruling

In its joint decision[8] dated February 27, 2003, the trial court found appellant guilty beyond moral certainty of doubt of the offenses charged against him and accordingly sentenced him, thus:

> THEREFORE, premises considered and the prosecution having established to a moral certainty the guilt of Accused PHILIP DILAO y CASTRO of the crimes charged, this Court hereby renders judgment as follows:
>
> - In Crim. Case No. 65963 for Violations of Sec. 5, Art. II of RA 9165 this Court, in the absence of any aggravating circumstance, hereby sentences the aforenamed Accused to LIFE IMPRISONMENT; and to pay the fine of five hundred thousand pesos (P500,000.00) without any subsidiary imprisonment in case of insolvency;
>
> - In Crim. Case No. 65964 for Violation of Sec. 11, Art. II of the same Act, this Court, in the absence of any modifying circumstance, sentences the common Accused to a prison term of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay the fine of three hundred thousand pesos (P300,000.00), without any subsidiary imprisonment in case of insolvency.
>
> xxx xxx xxx
>
> SO ORDERED.

Therefrom, appellant came directly to this Court considering the penalty imposed.

Per Resolution dated March 9, 2005,[9] however, the Court, in line with its ruling in People v. Mateo,[10] referred the cases to the CA for intermediate review, whereat it was docketed C.A.—G.R. CR.-H.C. No. 00920.

On May 26, 2005, the CA rendered its Decision[11] affirming in toto that of the trial court, thus:

> WHEREFORE, the appealed Decision dated February 27, 2003 of the trial court is affirmed in toto.
>
> SO ORDERED.

Aggrieved, appellant sought reconsideration, which the CA denied in its Resolution of September 16, 2005.[12]

The case is again with this Court pursuant to the Notice of Appeal filed by appellant with the appellate court which has forwarded the entire records of the case to this Court.

In its Resolution of February 20, 2006, the Court accepted the appeal and required the parties to file their supplemental briefs, if they so desire.

In his manifestation[13] of March 21, 2006, appellant in effect waived the filing of any supplemental brief and declared that he is adopting his brief dated May 20, 2004, heretofore submitted before the Court, wherein he raised the following matters:

> - The Court a quo gravely erred in giving weight and credence to the incredible and inconsistent testimony of the prosecution witnesses, and
>
> - The Court a quo gravely erred in convicting the accused-appellant of the crime charged despite the fact that his guilt was not proven beyond reasonable doubt.

Appellant assails the credibility of the prosecution witnesses on the alleged buy-bust operation, particularly that of PO2 Rolando De Ocampo, contending that there were discrepancies in the testimony of PO2 De Ocampo, the poseur-buyer, and the affidavits submitted to the trial court. He maintains being a victim of a frame-up operation of police operatives who, in fact, recovered nothing illegal from him. He urges the Court to take judicial notice of the reality that some law enforcers in drug-related cases, in their quest to secure information from suspected drug dealers, resort to numerous anomalous practices, such as planting evidence, physical torture and extortion.

Moving on, appellant insists that the presumption on regularity in the performance of an official duty, by itself, could not sustain a conviction, let alone prevail over the presumption of innocence in his favor. On these broad

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premises, appellant thus maintains that the prosecution failed to adduce adequate evidence to prove his guilt.

The Court's Ruling

We AFFIRM.

Right off, the Court shall address appellant's lament about the credibility of witness PO2 De Ocampo. According to appellant, PO2 De Ocampo's testimony should have altogether been discredited since he, as poseur-buyer, cannot even remember ("Hindi ko gaanong matandaan")[14] the marking he allegedly placed on the P100.00-bill marked money, albeit he did recall its serial number.

While indeed PO2 De Ocampo failed to remember early in his direct testimony the markings placed on the marked money, he readily identified the said markings during the latter part of the direct examination. We quote from the transcripts of stenographic notes:

> Q. I am showing to you a photo copy of a one hundred peso bill with serial number ZX-985203, will you please go over it and tell the Court its relation to the one which you used as buy bust money against the accused?
>
> A. this is it sir.
>
> Q. Why did you say so?
>
> A. This is what we entered in the blotter book sir.
>
> Q. Will you please go over this photo copy and tell us if this is your initial appearing immediately after the serial number ZX-985203 in the lower part corner of this money?
>
> A. Yes sir. There is.
>
> Q. Can you explain to us what does that initial RDO mean?
>
> A. Refers to my initial Rolando de Ocampo sir.
>
> Q. How did that initial indicated there?
>
> A. Because every time we conducted buy bust operation we always put initial sir.
>
> Q. If you recall where did you place that initial RDO in the original copy of that buy bust money?
>
> A. In our office sir.
>
> Q. When?
>
> A. At 9:45 p.m. July 19, 2002 sir.

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Q. Also there's (sic) appear on the right side of this buy bust money a figures 07/19/02 what does that mean?

A. We put that when we conducted the buy bust operation sir.

Q. Who was the one who placed that?

A. Me sir.

Q. When?

A. On that very day sir.

Q.

Before or after the operation?

A. Before the operation sir. [15]

Moreover, the failure of PO2 De Ocampo to recall immediately the markings on the buy-bust money only shows that he is an uncoached witness. Such momentary lapse in memory does not detract from the credibility of his testimony as to the essential details of the incident. As the trial court aptly found, PO2 De Ocampo was candid, forthright and categorical in his testimony:

> xxx . In the first place, this Court has had the untrammeled opportunity to observe the conduct and demeanor of poseur-buyer PO2 DE OCAMPO while testifying on the witness stand and definitely he was noted to testify in a candid, forthright and categorical manner which are the earmarks of a truthful and credible witness.

The Court accords the highest degree of respect to the findings of the lower court as to appellant's guilt of the offenses charged against him, particularly where such findings are adequately supported by documentary as well as testimonial evidence. The same respect holds too, as regards the lower courts' evaluation on the credibility of the prosecution witnesses. It is a settled policy of this Court, founded on reason and experience, to sustain the findings of fact of the trial court in criminal cases, on the rational assumption that it is in a better position to assess the evidence before it, having had the opportunity to make an honest determination of the witnesses' deportment during the trial.[16]

Furthermore, the well-entrenched rule is that the findings of facts of the trial court, as affirmed by the appellate court, are conclusive on this Court, absent any evidence that both courts ignored, misconstrued, or misinterpreted cogent facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case.[17] And in the instant case, after a careful evaluation of the records, we find no oversight committed by the trial and appellate courts for us to disregard their factual findings as to the fact of possession and selling by the appellant of "shabu."

As between appellant's testimony and that of the arresting/entrapping police officers as to what occurred in the evening of July 19, 2002, this Court finds, as did the trial court, the accounts of the latter more credible. For, aside from the presumption that they – the police operatives – regularly performed their duties, we note that these operatives, as prosecution witnesses, gave consistent and straightforward narrations of what transpired on July 19, 2002. As things stand, the police officers uniformly testified of having apprehended the appellant in a buy-bust operation and upon being frisked, was also found to be in possession of another sachet containing a white

crystalline substance later on found to be methamphetamine hydrochloride, more popularly known as "shabu."

It cannot be over-emphasized that a buy-bust operation is a legally effective and proven procedure, sanctioned by law at that, for apprehending drug peddlers and distributors. It is often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities.[18] Credence of the buy-bust operators cannot be undermined by the mere fact that law enforcers are perceived to resort to the practice of planting evidence to gain favor from their superiors. In the absence of proof of motive to falsely impute a serious crime against an accused, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's often self-serving and uncorroborated claim of having been a victim of a frame-up.

It must be remembered that appellant's defense of frame-up and denial requires strong and convincing evidence to support them for the incantation of such defense is nothing new to the Court.[19] As it were, appellant only offered an unsubstantiated tale that the police officers asked, in police jargon, a "palit-ulo"[20] and that he was a victim of a frame-up. His allegations that the police officers likewise beat him up in their attempt to extract information from him is belied by the absence of any proof to that effect. And without so much of an explanation, appellant did not even present as witness his companion Socrates Manalad, alias "Sote," who was allegedly with him when the apprehension was effected. If the police officers indeed tried to extort information from appellant by beating him up, appellant could have filed the proper charges against the erring police officers. The fact that no administrative or criminal charges were filed lends cogency to the conclusion that the alleged frame-up was merely concocted as a defense ploy.

Clearly, as against the positive testimonies of the prosecution witnesses that they red-handedly caught appellant in a buy-bust operation selling "shabu," supported by other evidence, such as the two (2) sachets of the prohibited substance seized from him and the marked money, appellant's negative testimony must necessarily fail. An affirmative testimony coming from credible witnesses without motive to perjure is far stronger than a negative testimony.[21] Records show that appellant and the police officers are strangers to each other. Thus, there is no reason to suggest that the police officers were ill-motivated in apprehending appellant. Moreover, there is nothing in the records which shows even an iota of evidence that the prosecution witnesses merely fabricated their testimonies to wrongly impute such a serious crime against the accused-appellant.

All told, in Criminal Case No. C-65963, the Court is convinced that the prosecution's evidence more than proved beyond reasonable doubt all the elements necessary in every prosecution for the illegal sale of "shabu," to wit: (1) identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. The delivery of the contraband to the poseur-buyer and the receipt of the marked money successfully consummated the buy-bust operation between the entrapping police officers and the appellant. What is material in 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.

Likewise proven by the same quantum of evidence is the charge for violation of Section 11, Article II, R.A. No. 9165 (illegal possession of shabu) in Criminal Case No. C-65964, appellant having knowingly carried with him the plastic sachet of "shabu" without legal authority at the time he was caught during the buy-bust operation.

Anent the penalty thus imposed, the RTC, as did the CA, correctly applied the provisions of Sections 5 and 11 (3) of R.A. No. 9165, which respectively provide:

> Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. – The Penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos

> (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell any dangerous drugs, xxx.
>
> xxx xxx xxx
>
> Section 11. Possession of Dangerous Drugs –
>
> (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of x x x, methamphetamine hydrochloride or "shabu" x x x. (Emphasis supplied).

Since the appellant was found guilty of selling "shabu" weighing 0.06 gram, absent any aggravating or mitigating circumstance, the trial court correctly sentenced him to life imprisonment and a fine of P500,000.00 in Criminal Case No. C-65963. Since he was also found guilty of possession of "shabu" weighing 0.07 gram, absent any aggravating or mitigating circumstance and in accordance with the Indeterminate Sentence Law, he was correctly meted a prison term of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and a fine of three hundred thousand pesos (P300,000.00) in Criminal Case No. C-65964.

WHEREFORE, the Decision dated May 26, 2005 of the CA in CA-G.R. C.R.-H.C. No. 00920, as reiterated in its resolution of September 16, 2005, affirming in toto that of the trial court is AFFIRMED in all respects.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Fernanda Lampas Peralta and concurred in by Associate Justices Ruben T. Reyes and Josefina Guevara-Salonga; rollo, pp. 3-18.

[2] Id. at 168.

[3] Id. at 68-83.

[4] CA Rollo, p. 7.

[5] Id. at 8.

[6] Id. at 96-120.

[7] Id. at 52-83.

[8] Supra note 3.

[9] Rollo, p. 2 and CA Rollo, pp. 128-129.

[10] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[11] Supra note 1.

[12] Supra note 2.

[13] Appellant's Manifestation in Lieu of Supplemental Brief dated March 21, 2006; rollo, pp. 20-21.

[14] TSN, October 1, 2002, p. 5.

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[15] Id. at 11-12.

[16] People v. Chua, G.R. No. 133789, August 23, 2001, 363 SCRA 562.

[17] Gaviola v. People, G.R. No. 163927, January 27, 2006, 480 SCRA 436 and People v. Cheng Ho Chua, G.R. No. 127542, March 18, 1999, 305 SCRA 28.

[18] People v. Uy, G.R. No. 128046, March 7, 2000, 327 SCRA 335, citing People v. Gaco, G.R. Nos. 94994-95, May 14, 1993, 222 SCRA 49 and People v. Garcia, G.R. No. 105805, August 16, 1994, 235 SCRA 371.

[19] People v. Uy, G.R. No. 144506, April 11, 2002, 380 SCRA 700.

[20] Appellant alleged that the police wanted him to give them a name and point to them the whereabouts of another drug peddler in exchange for his own freedom and the dropping of charges against him.

[21] Id. citing People v. Ramirez, G.R. No. 97920, January 20, 1997, 266 SCRA 335.

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