

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RICARDO FERNANDO Y MONTIAS, ACCUSED-APPELLANT.

G.R. NO. 170836. April 04, 2007

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Accused-appellant, Ricardo Fernando y Montias (the accused), was charged for violation of Republic Act No. 9165 (the Comprehensive Dangerous Drugs Act of 2002) in two Informations before the Regional Trial Court (RTC) of Caloocan on August 28, 2002.

The first Information, docketed as Criminal Case No. C-66149, for possession of dangerous drugs, which was raffled to Branch 127, alleged as follows:

x x x x

That on or about the 19[th] day of August 2002, in the City of Caloocan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being a private person and without being authorized by law, did then and there willfully, unlawfully and feloniously have in their [sic] possession, custody and control one (1) heat sealed transparent plastic bag containing white crystalline substance weighing 0.07 gram which substance when subjected to chemistry examination gave positive results of Methylamphetamine Hydrochloride otherwise known as "shabu" which is a dangerous drug.

x x x x[1]

The second Information, docketed as Criminal Case No. C-66150, for selling dangerous drugs, which was raffled to Branch 120 of the same court, alleged as follows:

x x x x

That on or about the 19[th] day of August 2002, in the City of Caloocan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being a private person and without being authorized by law, did then and there, willfully, unlawfully and feloniously in consideration of the sum of one hundred pesos (P100.00), sell and distribute to PO3 Rodrigo Pagsolangan, who posed as buyer of one (1) heat sealed transparent plastic bag containing white crystalline substance weighing 0.07 gram which substance when subjected to chemistry examination gave positive results of Methylamphetamine Hydrochloride otherwise known as "shabu" which is a dangerous drug.[2]

x x x x

The second case was consolidated with the first.[3]

The evidence for the prosecution established the following version:

On August 19, 2002, an informant reported to the Chief of the Caloocan City Police, Senior Inspector Jose Valencia (Valencia), that someone in Cottage 10th Avenue, Caloocan City was selling drugs "to everyone and

anyone."[4]

Valencia thus formed a buy-bust team composed of PO3 Rodrigo Garcia Pagsolingan (PO3 Pagsolingan), PO1 Joseph delos Santos (PO1 Delos Santos), one PO3 Antonio, one PO3 Gamit, and one PO3 Modina. Designated as poseur-buyer was PO3 Pagsolingan who was given a P100 bill to be used as buy-bust money. PO3 Pagsolingan thereupon marked the P100 bill with his initials "RGP."

The buy-bust team and the informant proceeded to Cottage 10th Avenue, Caloocan City and when they reached M. Hizon St., the informant, seeing the accused, pointed to ("nginuso") him. PO3 Pagsolingan thus approached the accused, telling him "Pare, pa-iskor nga ng piso," meaning he wanted to buy P100.00 worth of shabu. As PO3 Pagsolingan handed the P100 bill to the accused, the latter took out a sachet from his pocket.[5]

PO3 Pagsolingan immediately gave the pre-arranged signal that the transaction was completed.

PO1 Delos Santos, who was hiding nearby with the rest of the buy-bust team members, immediately approached and frisked the accused, retrieving from his pants' pocket the P100 buy-bust money and a plastic sachet containing a white crystalline substance.[6] The accused was thus arrested and PO1 Delos Santos and PO3 Pagsolingan turned over the marked money and the two sachets containing white crystalline substance to PO3 Hector Castillo, who then marked the sachets and delivered them to the Philippine National Police Crime Laboratory for examination.[7] The substance in the sachets tested positive for methylamphetamine hydrochloride or shabu.[8]

Upon the other hand, the accused, denying the charges, gave the following version:[9]

In the afternoon of August 19, 2002, while he was outside the house, near the window, of his friend Anthony Villanueva where a birthday party for the latter's father was going to be held and as he was singing along with a videoke, one Antonio ran towards him, asked him what he was doing there, frisked him and at the same time took P400 from the only pocket of his "garter short" [sic], and then summoned his (Antonio's) companions.

As the men were about to leave, he asked Antonio to give his money back. Apparently peeved, Antonio remarked "Putang ina mo, halika, makulit ka, sumama ka" and handcuffed him.

A commotion ensued for "hindi tumagal ng 20 minutes" during which he was mauled, even catching the attention of bystanders in the alley. He was thereafter boarded into an owner-type jeep, brought to the Drug Enforcement Unit headquarters where his ring and "earring" were taken, mauled again, and detained. He was informed that his case was "5 and 11 and no bail,"[10] and PO1 Delos Santos advised him that if he wanted to be released, he should tell any visitor of his to settle his case monetarily.

When his mother visited him, PO1 Delos Santos asked her for money in exchange for settling the case, but his mother replied that she could not afford "that big amount" demanded.[11]

By Decision[12] of October 8, 2003, Branch 127 of the RTC Caloocan convicted the accused in both cases, disposing as follows:

WHEREFORE, premises considered, and the prosecution having established beyond an iota of doubt the guilt of Accused RICARDO FERNANDO Y MONTIAS, of the crimes charged, this Court hereby renders judgment as follows:

- In Crim. Case No. 66149 for Viol. of Sec. 11, Art. II of RA 9165 this Court, in the absence of any aggravating circumstance hereby sentences aforementioned 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;
- In Crim. Case No. 66150 for Viol. of Sec. 5, Art. II of the same Act this Court, in the absence of any

aggravating circumstances, hereby sentences the 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.

Subject drug in both cases are hereby declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.

This Court ends with a note that it is not exactly happy at seeing a small-time drug pusher, suffer the severe penalty for LIFE IMPRISONMENT for the sale of illegal drug consisting merely of 0.07 grams of methylamphetamine hydrochloride, however, that is the imposable penalty under RA 9165, hence this Court has no option but to apply the same. Accused committed an offense in open defiance of the continuing and relentless campaign of the Government to rid society of the drug menace and its disastrous harmful social, economic and even spiritual effects, thus, he cannot escape the full clutches of the law. DURA LEX SED LEX.[13]

On the accused's filing a Notice of Appeal,[14] the records of the case were forwarded to this Court.[15]

In his Brief filed before this Court,[16] the accused, arguing that his guilt was not proven beyond reasonable doubt, drew attention to contradictions in the testimonies of prosecution witnesses PO3 Pagsolingan and PO1 Delos Santos, viz:

x x x PO1 delos Santos testified that there was a pre-arranged sign that the transaction was consummated, thus PO3 Pagsolingan made a signal by scratching his head. PO[3] Pagsolingan, however, declared that after the plastic sachet containing the white crystalline was delivered to him, he communicated the pre-arranged signal by placing a towel on his right shoulder.

x x x x

Likewise, PO1 delos Santos testified that he recovered the plastic sachet containing the alleged shabu from the right pocket of the accused appellant.

x x x x

While, PO3 Pagsolingan stated that the buy-bust money and the plastic sachet were recovered by PO1 delos Santos from the left pocket of the accused.[17] (Emphasis and underscoring supplied)

The case was referred to the Court of Appeals, following *People v. Mateo*,[18] for intermediate review of criminal cases imposing death penalty, life imprisonment, or reclusion perpetua.[19]

By Decision[20] of October 26, 2005, the Court of Appeals found the contradictions in the testimonies of the two police authorities inconsequential.[21] And it noted the weakness of the defense of the accused, thus:

In the case at bar, x x x appellant failed to substantiate his defense of frame-up or "hulidap." No evidence was adduced by the appellant to show that the buy-bust operation was resorted to in order to harass, extort, or abuse him. Moreover, for the police officers to frame him up, they must have known appellant prior to the incident. This is clearly not the case here for appellant himself admitted that he does not know any of the police officers who arrested him prior to the incident.

Anent his allegation that he was mauled by the police officers when he was arrested and during his incarceration, We likewise find the same to be without basis, considering that no medical certificate was presented by him to prove such claim. He did not even bother to present his mother in the witness stand to corroborate his claim. After all, he testified that [his] mother regularly visited him during his confinement, hence, she would have surely seen the injuries inflicted on him, if there was any. Moreover, he did not file any case, administrative or criminal, against the police officers concerned. When asked why he did not file any case against the police officers who allegedly mauled him, he simply answered that his mother failed to do so

due to utter confusion. Such inaction by appellant runs counter to the normal human conduct and behavior of one who feels truly aggrieved by the act complained of.[22] (Underscoring supplied)

On elevation to this Court of the case which accepted the same,[23] both parties manifested that they were no longer filing supplemental briefs, proffering that their respective briefs filed before the Court of Appeals had already exhaustively discussed the pertinent issues.[24]

The appeal is bereft of merit.

As did the court a quo, this Court finds that the conflicting testimonies of prosecution witnesses PO3 Pagsolingan and PO1 Delos Santos on the pre-arranged signal and from which pocket of the accused the sachet subject of the case for illegal possession was taken are inconsequential.[25] As this Court ruled in *People v. Madriaga*: [26]

x x x Settled is the rule that discrepancies on minor matters do not impair the essential integrity of the prosecution's evidence as a whole or reflect on the witnesses' honesty. These inconsistencies, which may be caused by the natural fickleness of memory, even tend to strengthen rather than weaken the credibility of the prosecution witnesses because they erase any suspicion of rehearsed testimony. What is important is that the testimonies agree on the essential facts and that the respective versions corroborate and substantially coincide with each other to make a consistent and coherent whole.[27] (Underscoring supplied)

Particularly relevant to the case at bar is this Court's pronouncement in *People v. Chang* [28] that "[t]o secure a reversal of the appealed judgment, the inconsistencies should have pertained to the actual buy-bust itself — that crucial moment when the appellants were caught selling or in possession of shabu — not to peripheral matters." [29]

The sachet confiscated and the sachet sold were identified and presented in court.[30] The accused was positively identified.[31]

The accused did not present evidence to overcome the presumption that he had no authority to sell shabu.[32] Nor that he had *animus possidendi*. [33] Neither did he substantiate his defense of *hulidap* or extortion, nor present evidence that the prosecution witnesses had motive to falsely charge him and/or that they did not perform their duties regularly.

x x x [W]ell-settled is the rule that prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the "buy-bust" operation. This Court has access only to the cold and impersonal records of the proceedings. Thus, it relies heavily on the rule that the weighing of evidence, particularly when there are conflicts in the testimonies of witnesses, is best left to the trial court, which had the unique opportunity to observe their demeanor, conduct and manner while testifying. Hence, its factual findings are accorded respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.[34]

x x x x

The defense of frame-up, like denial and alibi, has invariably been viewed by the courts with disfavor, for it can easily be concocted. It is a common and standard ploy employed by the accused in prosecutions for violation of the Dangerous Drugs Act. Being factual in nature, the tenability of this defense depends largely on the trial court's assessment of the credibility of the testimonial evidence of the accused.[35]

True, in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, we also realize the disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts — solely on the basis of policemen's allegedly rotten reputation — accept in every instance this form of defense which can be so easily fabricated. Hence, for such defense to prosper, the evidence must be clear and convincing. x x x [36]

x x x x

x x x [I]n the absence of proof of motive for falsely imputing such a serious crime, 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 the self-serving and uncorroborated claim of frame-up. With nothing to substantiate such malicious accusation, credence shall be given to the narration of the incident by the prosecution witnesses because, being police officers, they are presumed to have performed their duties in a regular manner. Certainly, the presumption of regularity must prevail over appellant's unfounded allegations.[37] (Underscoring supplied)

While the accused, along with Anthony Villanueva, substantiated his defense of huliidap, their testimonies leave much to be desired. As the trial court observed:

x x x x

With respect to the charge for frame-up or "HULIDAP" [leveled] by the Accused against his arresting officers, the same was not accorded any evidentiary value by this Court since Accused could not even identify this so called police officer who deprived him of his ring and earring. x x x

In the same breath, this Court discards as shallow the charge for attempted extortion cast by the Accused against PO1 DELOS SANTOS since he (accused) himself conceded that this particular matter including the amount being demanded was brought up by PO1 DELOS SANTOS to his mother who in turn relayed the information to him. In fine, the detail of this alleged attempt to extort money from the Accused's mother was only told by the latter to her son, thus hearsay evidence. x x x [38]

x x x x

Regarding the corroborative testimony offered by defense witness, ANTHONY VILLANUEVA, the same was given scant consideration by this court being the usual kind one could expect from one's friend and co-worker for the past five (5) years. Besides, it is doubtful if he indeed witness[ed] the incident considering that according to this ANTHONY VILLANUEVA, at the time of the incident he was fixing the tables at the place where the birthday party of his father was to be held and per statement of the Accused the venue of the party was at the vacant lot at the back of VILLANUEVA's house which could not be seen in front. x x x

x x x x

Withal, if we were to believe the declaration of the Accused, it is not possible for ANTHONY who was said to be at the back of their house to see the actual apprehension of the Accused.[39] (Underscoring supplied)

A word more. Given the claim of the accused that on being accosted, a commotion ensued for less than 20 minutes within the view of bystanders nearby, why he did not present any of them should render the falsity of his defense more pronounced.

WHEREFORE, the appeal is DENIED and the decision appealed from is AFFIRMED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga, and Velasco, Jr., JJ., concur.

[1] Records, p. 2.

[2] Id. at 12.

[3] Id. at 24.

[4] TSN, February 18, 2003, p. 5.

[5] Id. at 8-10.

[6] TSN, December 4, 2002, p. 8.

[7] TSN, December 3, 2002, pp. 4-8; TSN, December 4, 2002, pp. 9-10; TSN, February 18, 2003, pp. 10-12; Exhibits for the Prosecution, p. 3.

[8] Exhibits for the Prosecution, p. 4.

[9] TSN, March 10, 2003, pp. 2-11; TSN, March 12, 2003, pp. 3-12.

[10] TSN, March 12, 2003, p. 3.

[11] Id. at 4.

[12] Records, pp. 132-154.

[13] Id. at 153-154.

[14] Id. at 157.

[15] Id. at 158; CA rollo, p. 1; vide Rules of Court, Rule 122, Section 3:

Section 3. How appeal taken —

x x x x

(c) The appeal to the Supreme Court in cases where the penalty imposed by the Regional Trial Court is death, reclusion perpetua, or life imprisonment, or where a lesser penalty is imposed but for offenses committed on the same occasion or which arose out of the same occurrence that gave rise to the more serious offense for which the penalty of death, reclusion perpetua, or life imprisonment is imposed, shall be by filing a notice of appeal in accordance with paragraph (a) of this section.

[16] CA rollo, pp. 55-69.

[17] Id. at unnumbered page after p. 64 up to p. 65.

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

[19] Id. at 656-658.

[20] Penned by Associate Justice Martin S. Villarama, Jr., with the concurrences of Associate Justices Eduardo Sundiam and Japar Dimaampao. CA rollo, pp. 122-140.

[21] Id. at 136.

[22] Id. at 139.

[23] Id. at 144-146; rollo, p. 22.

[24] Rollo, pp. 23-26.

[25] Vide *People v. Madriaga*, G.R. No. 82293, July 23, 1992, 211 SCRA 698, 709-712; *People v. Mariano*, G.R. No. 86656, October 31, 1990, 191 SCRA 136, 148 (disparities between testimonies as to the pre-arranged signal in a buy-bust operation are inconsequential).

[26] *Supra*.

[27] Id. at 712-713.

[28] 382 Phil. 669 (2000).

[29] Id. at 694.

[30] Records, pp. 81-82, 84; Exhibits for the Prosecution, pp. 3-9; TSN, December 3, 2002, pp. 3-6; TSN, December 4, 2002, pp. 12-13; TSN, February 18, 2003, pp. 10-12; vide *People v. Kimura*, G.R. No. 30805, April 27, 2004, 428 SCRA 51, 61: "In all prosecutions for violation of the Dangerous Drugs Act, the existence of all dangerous drugs is a sine qua non for conviction. The dangerous drug is the very corpus delicti of the crime of violation of the Dangerous Drugs Act."

[31] TSN, December 4, 2002, p. 13; TSN, February 18, 2003, pp. 9-10.

[32] Vide *People v. Manalo*, G.R. No. 107623, February 23, 1994, 230 SCRA 309, 318-319.

[33] Vide *People v. Bongcarawan*, 433 Phil. 918, 928 (2002).

[34] *People v. Sy*, 438 Phil. 383, 397-398 (2002).

[35] Id. at 403.

[36] Id. at 404.

[37] Id. at 405.

[38] Records, p. 149; vide TSN, March 12, 2003, p. 9.

[39] Id. at 150-151; vide TSN, March 10, 2003, pp. 8-9; TSN, May 12, 2003, p. 8.

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