PEOPLE OF THE PHILIPPINES, APPELLEE, VS. BOYET SANCHEZ Y BUNDALIAN, APPELLANT.

G.R. NO. 172467. July 30, 2007

Ponente: TINGA, J.

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TINGA, J.:

Before this Court is an appeal from the Decision[1] dated 7 December 2005 of the Court of Appeals in CA-G.R. CR-H.C. No. 00164, affirming the conviction of Boyet Sanchez y Bundalian (appellant) by the Regional Trial Court in Criminal Case No. 02-1854. The trial court found appellant guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, which penalizes the sale of any dangerous drug.

In an Information dated 10 July 2002, appellant was charged as follows:

> That on or about the 8[th] day of July 2002 in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without being lawfully authorized to possess or otherwise use and without the necessary prescription, did then and there willfully, unlawfully and feloniously sell, distribute and transport zero point zero two (0.02) gram of Methylamphetamine hydrochloride, a regulated drug, for a consideration of Php100.00.
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> CONTRARY TO LAW.[2]

Upon arraignment, appellant pleaded not guilty. During trial, the prosecution witnesses testified on the following facts:

Acting upon a tip from an asset, a team, composed of PO2 Angelo Aguas, PO2 Vicente Barrameda, PO2 Rodrigo Igno (Igno) and then PO1 Rey Memoracion (Memoracion), was formed by P/Insp. Gary Reyes to conduct a buy-bust operation. Memoracion was designated as the poseur-buyer. He was also provided with a P100.00 bill as marked money.[3]

On 8 July 2002, at around 6:30 p.m., the group proceeded to Palanan, Makati where Memoracion spotted appellant standing along Curie Street. The rest of the team members were strategically positioned in the vicinity.[4]

Memoracion, accompanied by an informant, was introduced to appellant as the buyer of shabu. Appellant then asked Memoracion for money. The latter gave the P100.00 bill to appellant who in turn took out one (1) plastic sachet containing white crystalline substance from his pocket. Memoracion examined its contents. After verifying that it was indeed shabu, he removed his bull cap as a signal to the back-up team that the sale was consummated.[5]

Igno arrived at the scene, introduced himself as a police officer, and immediately placed appellant under arrest. Igno apprised appellant of his constitutional rights in Tagalog. Appellant was ordered to empty his pockets and the P100.00 buy-bust money was recovered from him. He was then brought to the Drug Enforcement Unit for investigation.[6] Meanwhile, the plastic sachet was brought to the Philippine National Police (PNP) Southern

Police Crime Laboratory for examination while a "GAR" marking was placed on the P100.00 bill by Memoracion for later identification.[7]

Police Inspector and Forensic Chemist Lourdeliza M. Gural (Gural) examined the plastic sachet containing 0.02 gram of white crystalline substance. She later prepared Report No. D-1094-2002, concluding therein that the specimen submitted contained methylamphetamine hydrochloride.[8] P/Insp. Maria Ana R. Dagasdas (Dagasdas) testified on said facts.

Appellant presented an entirely different and predictably exculpatory version. He narrated that on 8 July 2002, at around 4:00 p.m. to 5:00 p.m., he was walking along Ampere Street in Palanan, Makati, when a white Tamaraw FX blocked his way. Four (4) armed men in civilian clothes alighted from the vehicle and told appellant that they will conduct a body search on him. Appellant was ordered to take off his clothes and shoes. Finding nothing on appellant, the four men dragged him into their vehicle. While appellant was shouting for help, somebody choked him from behind, rendering him unconscious.[9] He was brought to the Criminal Investigation Division (CID) where he was beaten up by the police and later detained at the Makati City Jail.[10] Appellant further averred that the whole incident was witnessed by residents in the area.[11]

On 27 March 2003, the trial court found appellant guilty and sentenced him to life imprisonment and payment of a fine amounting to P500,000.00.[12] The trial court ruled that the prosecution succeeded in proving the presence of all the elements of the offense charged:

> The plastic sachet containing white crystalline substance taken from the accused was delivered and submitted to the PNP Crime Laboratory for testing on 08 July 2002; immediately after it was turned over for investigation and documentation. Said plastic sachet was delivered by PO2 Costa and received by Officer Relos. x x x The markings placed by the arresting officer prove[d] that the plastic sachet delivered for laboratory examination is the same plastic sachet recovered from the accused x x x.
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> The identity of the accused was positively established. In open court, witnesses for the prosecution pointed to accused as the person arrested by them after consummation of the buy-bust operation. This same person, when asked of his identity identified himself as Boyet Sanchez. The marked money found in the possession of the accused was likewise positively identified by the police officers as the same one provided and used for the operation.[13]

The appeal was originally brought to us. However, in a Resolution dated 6 September 2004, this Court ordered the transfer of the case to the Court of Appeal pursuant to People v. Mateo.[14]

The Court of Appeals rendered a Decision[15] affirming appellant's conviction. Both the prosecution and the defense filed their separate manifestations and adopted the same arguments in their Brief before the Court of Appeals. [16]

Appellant imputes grave error to the trial court in not acquitting him of the offense charged based on reasonable doubt. Appellant denies peddling shabu and accuses members of the CID in mauling him. He also capitalizes on the alleged mix-up by the prosecution as to the location of the arrest, which he claimed was on Ampere Street while his actual residence is on Curie Street. Lastly, appellant contests the presentation of Dagasdas as the expert witness, instead of Gural who actually examined the plastic sachet containing the alleged shabu.[17]

The elements necessary to establish a case for illegal sale of shabu are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[18]

Memoracion, who acted as the poseur-buyer, categorically testified that he gave the P100.00 marked money to appellant in exchange for one (1) plastic sachet of shabu:

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Q: You mentioned that you were introduced to the accused as in need of shabu , how did your asset tell that to him?

A: He introduced me to him as his friend, sir.

Q: And how did he say that to the subject of your operation?

A: "Pare, kaibigan, ko gusto sanang bumili."

Q: And what was the answer of Boyet when you were introduced to him as a friend of your asset who was in need of shabu?

A: The suspect asked me for the money, sir.

Q: And what did you tell him?

A: I got [sic] the money and gave it to him, sir.

Q: How much money did you give [A]lyas Boyet at that time?

A: P100.00, sir.

Q: And what is the relation of this bill to the money earlier provided by your chief of office?

A: That was the buy bust money we used in our operation, sir.

Q: And after you delivered the money to Boyet, this P100.00 bill, can you tell the Honorable Court what[,] if any, did he do at that time?

A: After he received the money, he got [one] 1 plastic sachet of suspected shabu and handed it to me, sir.

Q: And where did he get that one [(1)] plastic sachet of shabu , Mr. Witness?

A: From his pocket, sir.

Q: And what did you do after receiving this plastic sachet containing white crystalline substance suspected for shabu ?

A: I examined it if that was really shabu , sir.[19]

As culled from the above testimony, the sale of shabu was consummated when the poseur-buyer received the illegal drug from appellant. Appellant was clearly identified in open court as the seller of the shabu.[20] There is no dispute as to the identity of the object of the sale. The object seized was submitted to the PNP Southern Police District Crime Laboratory in Taguig, Metro Manila for examination. Gural confirmed in Report No. D-1094-2002

that the specimen submitted yielded positive for methylamphetamine hydrochloride.[21] The marked money was presented in court and identified by the poseur-buyer.[22]

Furthermore, the testimony of the poseur-buyer was substantially corroborated by Igno as to the exchange, the identity of the seller, the object, and consideration of the sale.[23]

The testimonies of these police officers were sustained by the trial court and affirmed by the appellate court as credible, thus:

> All the prosecution's witnesses to the buy-bust operation consistently and unequivocally narrated the events that transpired during the operation, particularly the delivery by the accused of the plastic sachet to PO1 Memoracion upon payment by the latter of the agreed amount. The testimonies with respect to the discovery of the marked money were likewise straightforward and definite.[24]

At this point, we reiterate the time-honored principle that factual findings of the trial court with respect to the credibility of the witnesses, when adopted and confirmed by the Court of Appeals, are final and conclusive unless circumstances are present that would show that the lower courts have overlooked, misunderstood, or misconstrued cogent facts that may alter the outcome of the case.[25] Indeed, these testimonies are worthy of credence as police officers involved in buy-bust operations are presumed to have performed their duties regularly. This presumption can only be overcome through clear and convincing evidence that shows either of two things: (1) that they were not properly performing their duty, or (2) that they were inspired by any improper motive.[26] There was absolutely no showing that either of these conditions obtains in the case at bar.

Appellant interposes denial as his main defense. Well-settled is the rule that bare denials cannot prevail over the positive testimonies of the witnesses. Notably, appellant did not present a single witness to corroborate his declaration in court that he was blocked by armed men, made to undress in the street, and dragged into a car. Neither did he introduce a medical certificate to support his claim that he was beaten and mauled by police officers. These unsubstantiated claims clearly fail in light of the categorical testimonies of the poseur-buyer, another police officer, and the forensic chemist pertaining to the facts and circumstances leading to the commission of the crime of illegal sale of shabu. Consequently, appellant's contention that there was a mix-up on the part of the police officers in locating the place of arrest deserves scant consideration.

Appellant also argues that the testimony of Dagasdas should have been regarded as mere hearsay because it was Gural who examined the alleged plastic sachet and not the former. The records disclose that during trial, the parties stipulated on the admissibility of the testimony of Dagasdas as to the facts that her office duly received the letter request together with the specimen allegedly recovered from appellant; that a laboratory examination was conducted; and that the result will be presented in court. Thereafter, Report No. D-1094-2002 was marked in evidence without objection from appellant's counsel. Thus, we agree with the Solicitor General that it is too late for appellant to question the presentation of Dagasdas as prosecution witness.[27]

Under Section 5, Article II of R.A. No. 9165, the penalty of life imprisonment to death and fine ranging from P500,000.00 to P1,000,000.00 shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved. Hence, the penalty of life imprisonment and fine of P500,000.00 were properly imposed.

WHEREFORE, the decision dated 7 December 2005 of the Court of Appeals, affirming the Regional Trial Court Decision dated 27 March 2003 convicting appellant Boyet Sanchez y Bundalian for violation of Section 5, Article II of R.A. No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00 is hereby AFFIRMED.

SO ORDERED.
Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

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[1] Rollo, pp. 3-12. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Mendoza.

[2] Records, p. 1.

[3] TSN, 3 October 2002, p. 6.

[4] Id. at 8-9.

[5] Id. at 9-11.

[6] Id. at 11-13.

[7] Id. at 15.

[8] Records, p. 7.

[9] TSN, 6 March 2003, pp. 3-6.

[10] Id. at 10.

[11] Id. at 8-9.

[12] CA rollo, p. 52.

[13] Id. at 51.

[14] Id. at 71.

[15] Supra note 1.

[16] Rollo, pp. 14-19.

[17] CA rollo, pp. 42-46.

[18] People v. Soriano, et al., G.R. No. 173795, 4 April 2007; People v. Zeng Hua Dian, G.R. No. 145348, 14 June 2004, 432 SCRA 25, 34.

[19] TSN, 3 October 2002, pp. 9-10.

[20] Id. at 14.

[21] Supra note 8.

[22] TSN, 3 October 2002, pp. 14-16.

[23] TSN, 13 November 2002, pp. 9-15.

[24] CA rollo, p. 51.

[25] Baxinela v. People, G.R. No. 149652, 24 March 2006, 485 SCRA 331, 341.

[26] Mendoza v. People, G.R. No. 150050, 17 June 2004, 432 SCRA 443, 447.

[27] CA rollo, p. 66.

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