

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. VINCENT EVANGELISTA, APPELLANT.

G.R. No. 175281 (FORMERLY G.R. NO. 152240). September 27, 2007

Ponente: TINGA, J.

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TINGA, J.:

For review[1] is the decision[2] of the Court of Appeals dated 14 July 2006 and its subsequent resolution[3] dated 3 November 2006 affirming in toto the judgment[4] dated 14 December 2001 of the Regional Trial Court (RTC)[5] of Quezon City, Branch 103, finding Raymundo Reyes (Reyes) and appellant Vincent Evangelista (appellant) guilty beyond reasonable doubt of violating Section 15, Article III of Republic Act No. 6425 (R.A. No. 6425), otherwise known as the Dangerous Drugs Act of 1972, as amended, and sentencing them to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00 each.

In an Information[6] dated 15 December 2000, Reyes and appellant were charged with the crime, thus:

That on or about the 13th day of December, 2000 in Quezon City, Philippines, the said accused, conspiring and confederating with and mutually helping each other, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did, then and there wilfully [sic] and unlawfully sell (or offer for sale) nine hundred seventy four point twelve (974.12) grams of methylamphetamine hydrochloride, which is a regulated drug.

CONTRARY TO LAW.

When arraigned, Reyes and appellant pleaded not guilty. Trial on the merits followed with the prosecution presenting SPO2 Celestino Dela Cruz (SPO2 Dela Cruz) as its sole witness. As culled from the findings of the Court of Appeals, the evidence for the prosecution attests to the following facts:

At around 3:00 p.m. of 13 December 2000, a female informant arrived at the Philippine National Police Narcotics Group in Kamuning, Quezon City and notified Lt. Joy Anrade that a certain Bong, later identified as appellant, and Rey, later identified as Reyes, were looking for a buyer of one (1) kilo of shabu. Lt. Anrade then immediately organized a buy-bust team which prepared the buy-bust money consisting of four (4) pieces of P1,000.00 and one (1) piece of P500.00 genuine bills, as well as several boodle bills. SPO2 Dela Cruz marked the lower portion of the genuine bills with his initials “CDC.”[7]

At around 9:00 p.m., the civilian informant, together with the buy-bust team composed of Lt. Anrade as team leader, SPO2 Dela Cruz as poseur-buyer and PO2 Rolando Tizon and PO2 Jorge Izon as back-up, proceeded to the target area of operation, i.e., the Shell Gasoline Station at Timog Avenue, Quezon City.[8]

SPO2 Dela Cruz and the informant positioned themselves at the side of the gas station while the rest of the team proceeded to its strategic positions nearby. Soon thereafter, the informant received a call from appellant and forthwith told the latter that she and the buyer were already at the gas station with the purchase money for the shabu.[9]

Later on, appellant arrived alone and asked for the money. SPO2 Dela Cruz replied that he needed to see the stuff first. Agreeing, appellant waved his hand at Reyes. When Reyes turned up, appellant requested him to get the stuff. Reyes went back to his car and fetched a small red box which allegedly contained the shabu. After examining the contents thereof, SPO2 Dela Cruz was immediately convinced, based on his experience and training as a Narcom poseur-buyer, that shabu was inside the box.[10]

When Reyes subsequently reiterated his demand for the money, SPO2 Dela Cruz answered that he had to get the same from his car. SPO2 Dela Cruz then proceeded to get the marked money and secretly gave his teammates their pre-arranged signal. After Reyes received the buy-bust money, PO2 Tizon and Izon introduced themselves as Narcom Agents and arrested Reyes and appellant.[11]

The subsequent chemical analysis of the seized substance revealed that the same was 974.12 grams of methylamphetamine hydrochloride or shabu.[12]

On the other hand, Reyes and appellant raised the defenses of denial and alibi. In their respective testimonies, Reyes and appellant alleged that they were framed-up and that they did not know each other prior to their arrest.[13]

Reyes averred that on 13 December 2000, at around 4:00 p.m., he was in his home in Mandaluyong City when he received a phone call from a certain Rose Lameseria, a friend of his. The latter purportedly asked him to meet with her at 9:00 that evening in Sir William Apartelle, Timog Avenue, Quezon City regarding his application for a job overseas. When Reyes arrived there at the designated time, he was informed by the deskman that Rose was not around. He requested for the key to her room intending to wait for her inside, and it was given to him after he allegedly registered as a guest.[14]

While waiting alone in Rose's room, Reyes purportedly heard a knock at the door. When he opened the same, several armed men immediately arrested him, entered the room and searched the same. The men saw a box on the dresser table which allegedly contained shabu. Reyes denied ownership thereof.[15]

To substantiate Reyes's alibi, the defense presented George Dumlao, a night manager of Sir William Apartelle. The witness testified that he was on-duty at the hotel from 7:00 p.m. of 13 December 2000 until 7:00 a.m. the following day. As night manager, Dumlao's duties included overseeing the activities of all departments of the hotel and for this purpose, he maintained a record of all matters that transpired therein. Contrary to the claims of Reyes, however, Dumlao testified that the hotel records revealed that neither Reyes and appellant nor a certain "Rose Alyssa" was registered as guests of the hotel on the evening in question. Moreover, his logbook either did not have a record of any arrest or any similar activity relating to the sale of prohibited drugs on 13 December 2000.[16] The witness presented in court the hotel records and occupancy report and marked as Exhibits "4" to "6." [17]

Appellant, on the other hand, testified that at around 9:15 on the evening in question, he was dining at a food plaza near Lexus along Timog Avenue, Quezon City. After eating, he headed for his car. Upon boarding the same, three (3) men suddenly approached him, poked their guns at him and pulled him out of the car. Appellant maintained that he was thereafter arrested and brought to a police station.[18]

Discarding Reyes and appellant's defenses and finding that the prosecution had proven beyond reasonable doubt the guilt of Reyes and appellant of the crime as charged, the RTC rendered judgment against them on 14 December 2001. The dispositive portion of the decision reads:

ACCORDINGLY, judgment is hereby rendered finding both accused Raymundo Reyes y Dizon and Vincent Evangelista y Bernaldez, GUILTY beyond reasonable doubt of the offense of selling in conspiracy with one

another, methylamphetamine hydrochloride weighing nine hundred seventy-four and 12/100 grams (974.12 grams), as charged herein, in violation of Section 15, R.A. [No.] 6425, and both accused are here[by] sentenced to suffer a jail term of Reclusion Perpetua and a fine each of P500,000.00.

The shabu subject of this case is ordered transmitted to the Dangerous Drugs Board for proper disposition after this sentence becomes final. No costs.

SO ORDERED.[19]

Conformably with this Court's decision in *People v. Mateo*,^[20] Reyes's and appellant's appeal was transferred to the Court of Appeals for intermediate review. Finding no sufficient basis to disturb the findings and conclusion of the trial court, the appellate court, on 14 July 2006, rendered its decision affirming in toto the conviction of Reyes and appellant.^[21]

Following the denial by the Court of Appeals of his motion for reconsideration, appellant filed before us a petition for review under Rule 45 of the Rules of Civil Procedure, dated 8 December 2006, challenging his conviction. Through a resolution dated 19 February 2007,^[22] the Court resolved to treat appellant's petition as a notice of appeal. Likewise, the same resolution ordered the parties to submit supplemental briefs if they so desired. In compliance therewith, the People of the Philippines and appellant respectively manifested that they were adopting their previous arguments in lieu of filing supplemental briefs.^[23]

Appellant assails the decision of the Court of Appeals for failing to apply the "objective" test in entrapment and buy-bust operations. Likewise, he makes issue of his conviction based on the sole testimony of SPO2 Dela Cruz and the failure of the prosecution to present the informant and other members of the buy-bust team. He attacks SPO2 Dela Cruz's testimony as replete with serious contradictions, pointing to inconsistencies made during SPO2's direct examination in relation to his Joint Affidavit, on the matter of who received the marked money.

At the outset, it should be pointed out that in a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of the credibility of witnesses and their testimonies.^[24] Considering that this Court has access only to the cold and impersonal records of the proceedings,^[25] it generally relies upon the assessment of the trial court, which had the distinct advantage of observing the conduct or demeanor of the witnesses during trial. Hence, factual findings of the trial court are accorded respect absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.^[26]

We find no cogent reason to overturn the findings and conclusions of the Court of Appeals and the RTC in the case before us. The positive identification made by poseur-buyer SPO2 Dela Cruz and the laboratory report, not to mention the dubious defenses of alibi and frame-up which Reyes and appellant have resorted to, sufficiently prove beyond reasonable doubt that they committed the crime charged.

In buy-bust operations, the testimonies of the police officers who apprehended the accused are usually accorded full faith and credit because of the presumption that they have performed their duties regularly. The presumption is overturned only if there is clear and convincing evidence that they did not properly perform their duty or that they were inspired by improper motive.^[27] Nevertheless, the courts are advised to take caution in applying the presumption of regularity. It should not by itself prevail over the presumption of innocence and the constitutionally-protected rights of the individual.^[28] In fact it is on this premise that we have laid down the "objective" test in scrutinizing buy-bust operations. In *People v. Doria*,^[29] we ruled:

We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start 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 drug subject of the sale. The manner by which the

initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the “buy-bust” money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused’s predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.[30]

Applying this “objective” test to the case at bar, the courts a quo correctly upheld the validity of the entrapment as shown by the testimony of SPO2 Dela Cruz. As the designated poseur-buyer, the latter was able to show the complete details of the transaction, from his introduction as a buyer to Reyes and appellant by the informant to the consummation of the sale and the eventual arrest of the Reyes and appellant.[31] SPO2 Dela Cruz recounted in full detail how the informant set the deal with Evangelista, their meeting at Shell Gasoline Station on Timog Avenue, the agreement to purchase the one (1) kilo of shabu after the drugs had been shown to him by Reyes and appellant, the actual exchange of money and the illegal drug between himself and Reyes and appellant, the arrest of Reyes and appellant and the recovery of the bust-bust money from Reyes.[32]

Contrary to the assertion of appellant that SPO2 Dela Cruz was only the delivery man thus characterizing his testimony as hearsay, the evidence on record shows that SPO2 Dela Cruz in fact did have personal knowledge of the offer to purchase the prohibited drugs, the acceptance thereof and the consideration therefor. He was present at the meeting between the informer and Lt. Anrade, as well as during at meeting between the informer and Reyes and appellant. Finally, as poseur-buyer, he directly transacted with appellant and Reyes for the purchase of the drugs. Thus, there is no basis to exclude SPO2 Dela Cruz’s testimony, let alone on the ground of hearsay.

The failure of the prosecution to present the informant does not vitiate its cause as the latter’s testimony is not indispensable to a successful prosecution for drug-pushing since his testimony would be merely corroborative and cumulative with that of the poseur-buyer who was presented in court and who testified on the facts and circumstances of the sale and delivery of the prohibited drug.[33]

Police authorities rarely, if at all, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court.[34] Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret.[35] Thus, except for a situation where the accused vehemently denies selling any prohibited drugs, coupled with inconsistent testimonies of the arresting officers or with the possibility that there exist reasons to believe that the arresting officer had motives to testify falsely against the accused, or in a situation where it was only the informant-poseur-buyer who witnessed the entire transaction,[36] the testimony of the informant is not essential for conviction to lie. No such exception obtains in the case at bar. What is crucial is that both of the accused were caught red-handed in the act of trafficking illegal drugs.

Likewise, the testimony of the other members of the buy-bust team is not necessary, for the lone testimony of a credible witness suffices to convict in drug cases.[37]

A judicious review of SPO2 Dela Cruz’s testimony fails to disclose any material inconsistency, contradiction or fabrication. His testimony was candid, straightforward and narrates in detail the circumstances of the buy-bust operation. The alleged inconsistency between SPO2 Dela Cruz’s joint affidavit which stated that the marked money was recovered from “Rey,” and his direct testimony in which he averred that the marked money was recovered from “Bong,” is more apparent than real and refers to a trivial matter. More importantly, the purported contradiction was promptly rectified by SPO2 Dela Cruz himself during cross-examination when he insisted that

it was “Rey” who demanded and received the buy-bust money from him.[38]

Conversely, appellant’s plea of denial and frame-up is unconvincing. Like alibi, frame-up as a defense has invariably been viewed with disfavor as it is a common and standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. Clear and convincing evidence is required to prove the defense of frame-up which Reyes and appellant have failed to proffer.[39]

The observations of the court a quo as regards appellant’s alibi are incisive. It is suspicious that the latter would go all the way to Quezon City from his home in Caloocan for no other purpose than to eat at an ordinary food plaza. Further, considering that appellant claims to frequent the place, he could not even remember the name of the food plaza.[40]

Likewise, we agree with the apt observations of the trial court which render the alibi of Reyes suspect. First, the night-duty manager of Sir William Apartelle, where he claims to have been arrested, denied any police raid, arrest or discovery of shabu in the hotel on the evening in question. Second, the front desk logbook of the said hotel does not have a record of either Reyes or Rose Lameseria, which in compliance with standard hotel procedure, should have been noted if Rose had indeed checked in thereat and if Reyes was given the key to her room. Third, the circumstances of the meeting alleged to have been set up by Rose with Reyes are highly irregular as: (a) interviews for job placements are generally conducted during office hours; (b) the meeting was in Quezon City when in fact Reyes was from Mandaluyong and Rose was from Makati; (c) no other interviewees were awaiting Rose. Fourth, Reyes did not present Rose to corroborate his alibi despite knowing where the latter could be located.[41]

All told, we are persuaded that the elements necessary for the prosecution of the illegal sale of drugs have been herein sufficiently established, i.e.: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and payment therefor.[42] Thus, we are in full accord with the assailed decision finding appellant and Reyes guilty of violating Section 15, Article III of R.A. 6425 and imposing upon them the penalty of reclusion perpetua and a fine of P500,000.00 each.

WHEREFORE, above premises considered, the assailed decision of the Court of Appeals finding appellant Vincent Evangelista guilty beyond reasonable doubt of violation of Section 15, Article III of R.A. No. 6425 and imposing upon him the penalty of reclusion perpetua and a fine of P500,000.00 is hereby **AFFIRMED** in toto. Costs de oficio.

SO ORDERED.

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

[1] The instant case is captioned “People of the Philippines v. Vincent Evangelista” following the caption in the Petition for Review which Evangelista filed before the Court on his behalf only, excluding his co-accused Reyes, in regard to the decision of the Court of Appeals.

Following the prohibition against the imposition of the death penalty effected by Republic Act No. 9346, there is no longer any automatic review of cases. Thus, the doctrine in *People vs. Mateo* [433 SCRA 640 (2004)] which requires the Court of Appeals, should it affirm an appellant’s conviction for death, reclusion perpetua, or life imprisonment, to refrain from entering judgment and elevate the entire records of the case to this Court for final disposition is deemed superseded. A notice of appeal by the appellant is therefore necessary to elevate the case to this Court for review. Consequently, as Reyes failed to file a notice of appeal, the decision of the Court of

Appeals, became final as to him.

[2] Rollo, pp. 28-47. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Josefina A. Guevara-Salonga and Aurora Santiago-Lagman.

[3] Id. at 50-51.

[4] Id. at 70-73.

[5] Presided by Judge Jaime N. Salazar, Jr.

[6] CA rollo, pp. 6-7.

[7] TSN, 3 July 2001, pp. 4-9.

[8] Id. at 7, 10-11, 33.

[9] Id. at 11-12.

[10] Id. at 13-15.

[11] Id. at 16-18.

[12] Records, p. 137. See Exhibit "B."

[13] TSN, 16 October 2001, pp. 13-14; TSN, 20 November 2001, pp. 6-7.

[14] TSN, 16 October 2001, pp. 3-6, 8.

[15] Id. at 5-8.

[16] TSN, 30 October 2001, pp. 3-14.

[17] Records, pp. 144-151.

[18] TSN, 20 November 2001, pp. 3-6, 11.

[19] Rollo, p. 73.

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

[21] Rollo, p. 46.

[22] Id. at 145.

[23] Id. at 171-172, 174-175.

[24] *People v. Corpuz*, 442 Phil. 405, 415 (2002), citing *People v. Sy*, G.R. No. 147348, 24 September 2002; 389 SCRA 594 and *People v. Chen Tiz Chang*, 325 SCRA 776, 17 February 2000.

[25] *People v. Ahmad*, G.R. No. 148048, 15 January 2004, 419 SCRA 677, 695, citing *People v. Sy*, *supra*.

[26] *People v. Ahmad*, *supra*. See also *People v. Corpuz*, *supra* and *People v. Lee Hoi Ming*, 459 Phil. 187, 194 (2003).

[27] *People v. De Guzman*, G.R. No. 151205, 9 June 2004, 431 SCRA 516, 522; citing *People v. Padasin*, 397 SCRA 417 (2003) and *People v. Eugenio*, 395 SCRA 317 (2003).

[28] *People v. De Guzman*, *supra*; *People v. Padasin*, *supra*.

[29] 361 Phil. 595 (1999).

[30] Id. at 621.

[31] See *People v. De Guzman*, supra; *People v. Padasin*, supra; *People v. So*, 421 Phil. 929 (2001).

[32] TSN, 3 July 2001, pp. 4-22.

[33] *People v. Delos Reyes*, G.R. No. 106874, 21 January 1994, 229 SCRA 439, 447, citing *People v. Odicta*, 197 SCRA 158 (1991); *People v. Alerta, Jr.*, 198 SCRA 656 (1991); *People v. Rumeral*, 200 SCRA 194 (1991); *People v. Carpio*, 207 SCRA 569 (1992); *People v. Bagame*, 207 SCRA 761 (1992).

[34] *People v. Nicolas*, G.R. No. 110116, 1 February 1995, 241 SCRA 67. See also *People v. Casolocan*, G.R. No. 156890, 13 July 2004, 434 SCRA 276.

[35] Id.

[36] *People v. Casolocan*, supra note 32 at 284, citing *People v. Lucero*, 229 SCRA 1 (1994).

[37] *People v. Delos Reyes*, supra note 31 at 447-448, citing *People v. Abelita*, 210 SCRA 497 (1992).

[38] TSN, 3 July 2001, pp. 37-39.

[39] *People v. Cadley*, G.R. No. 150735, 15 March 2004, 425 SCRA 493.

[40] Id. at 133.

[41] Rollo, pp. 132-133.

[42] *People v. Ahmad*, supra note 24; citing *People v. Patayek*, G.R. No. 123076, 26 March 2003, 399 SCRA 490.

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