

THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SALVADOR SANTOS, JR. Y SALVADOR, APPELLANT.

G.R. No. 175593. October 17, 2007

Ponente: TINGA, J.

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TINGA, J.:

Salvador Santos, Jr. y Salvador (appellant) was charged before the Regional Trial Court of San Mateo, Rizal, Branch 77 with illegal sale and possession of shabu in violation of Sections 5 and 11, Article II of Republic Act No. 9165[1] (R.A. 9165), to wit:

CRIMINAL CASE No. 6365

That on or about the 28[th] day of August 2002 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another person one (1) heat-sealed plastic sachet of white crystalline substance weighing 0.08 gram which was found positive result (sic) to the screening and confirmatory test for Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[2]

CRIMINAL CASE No. 6366

That on or about the 28[th] day of August 2002 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in his possession and control white crystalline substance placed in twelve (12) heat sealed transparent plastic sachets with a total weight of 1.36 grams which were found positive to the test for Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.[3]

Appellant entered a negative plea to both charges.[4] The two cases were jointly heard. At the trial, the prosecution presented its lone witness, PO3 Juanito L. Tougan.

Tougan, who was assigned at the Intelligence Section of the San Mateo, Rizal Police Station, testified that at around 9:50 p.m. on 28 August 2002, he, together with SPO1 Arellano and PO2 Pontilla received information from their civilian informant that a certain Badong Santos was selling illegal drugs. The police officers right away planned the arrest of herein appellant and they agreed that Tougan would act as a poseur-buyer. Together with the civilian informant, they headed to appellant's residence. There, Arellano and Pontilla positioned themselves more or less ten (10) meters away from the house where they could observe the impending transaction without being noticed. It was dark outside but the house was well-lit. Appellant opened the gate and upon seeing the civilian informant uttered, "Pare." The civilian informant replied, "Pare, kukuha kami ng panggamit." Tougan handed appellant the marked money worth P200.00 which bore Tougan's initials, "JLT." After taking the money,

appellant went back inside the house and returned with a plastic sachet of shabu. Tougan got hold of the plastic sachet of shabu, held appellant's hand and introduced himself as a policeman. Tougan then directed appellant to empty his pockets of their contents. Tougan recovered the two (2) one hundred peso bills used as marked money and twelve (12) plastic sachets of shabu contained inside a white box. The police officers thereafter brought appellant to the police station. There, Tougan wrote his initials on all the thirteen (13) sachets of shabu. A document was prepared for these to be examined at the PNP Crime Laboratory. Tougan also stated that he had executed a sworn statement regarding the buy-bust incident.[5]

On cross-examination, Tougan stated that appellant had been included in a drug-watch list submitted by the barangay captain containing the names of drug pushers in the area. At the time of appellant's apprehension, however, the barangay captain had already discontinued submission of the said list to the police. Tougan was directed by the judge to bring to court the watch list he had talked about. [6]

At the next hearing, Tougan presented the watch list for the years 2000 and 2001. He explained that appellant was not included in the said list as the latter was then detained in the provincial jail for another criminal charge. He disclosed, however, that the latest watch list in possession of the police department was dated July 2003.[7]

As lone witness for the defense, appellant testified that at around 11:00 p.m. on 28 August 2002, he was at home fixing a fluorescent lamp. His wife and three children were there with him. Suddenly, they heard a sound coming from the gate. Appellant peeped through the window and saw policemen Tougan, Arellano and Pontilla. He was able to recognize them because he had served as their informer for almost three months. He went out of the house to greet them and in response, the policemen told him that they had been looking for him. They then held his hands and pushed him into the house. Tougan shoved him onto the sofa, and Arellano and Pontilla searched the house. Tougan frisked him and confiscated his money of P180.00. Meantime, Pontilla searched the table and got hold of a set of dart pins owned by appellant's son. Appellant asked the police officers why they came to his house and they replied that they had been harboring a grudge against him because he no longer wanted to serve as their informer. He saw Pontilla take a box out of his pocket and heard him say that it contained shabu and drug paraphernalia. He told Pontilla that if the box was his he would not have placed it on the table but instead hidden it from his children. Pontilla replied, "tumigil ka diyan, tumahimik ka." At the time of the commotion, appellant stated that the members of his family stayed in another room and were very afraid. Pontilla told appellant's wife, "ilabas mo na iyan" to which she replied, "Ano ang ilalabas ko? Pinerwisyo ninyo na nga kami." Afterwards, appellant was handcuffed and dragged to the police station where he was detained at once without being informed of his rights.[8]

Appellant also testified that aside from being a police informer, he also worked as a tricycle driver. He likewise stated that he was applying for a job at the Office of the Provincial Prosecutor and that he had a recommendation from police officer Amatong. He denied being a drug pusher, as well as receiving the marked money. And while appellant believed that the evidence against him had been planted, he did not file a complaint against the police officers because nobody would attend to his complaint.[9]

On cross-examination, appellant stated that he volunteered to be a police informer and served as such from May to July 2002. During this period, he reported to the police officers four times and had acted three times as a poseur-buyer. He, however, decided to sever his ties with the police officers as the latter reneged on their promise to give him money each time a drug pusher was arrested. He also claimed that the police officers had him arrested in order to conceal the illegal acts they had committed during arrests, such as confiscating all the belongings and monies of the person arrested. But he admitted having been previously indicted in two (2) cases for selling and possessing shabu.[10] On re-direct examination, he revealed that he was released from imprisonment on 13 December 2001. Thereafter, he worked as a tricycle driver and applied for a job in the municipal government of

San Mateo, Rizal.[11]

After trial, the trial court rendered a Decision[12] dated 17 November 2004 disposing as follows:

WHEREFORE, premises considered, accused SALVADOR SANTOS Y SALVADOR is hereby found GUILTY as charged beyond reasonable doubt and is hereby sentenced to Life Imprisonment and to pay a fine of FIVE HUNDRED THOSAND (sic) (P500,000.00) PESOS for Violation of Section 5, of R.A. 9165 and to suffer an imprisonment of TWELVE (12) YEARS AND ONE DAY TO TWENTY YEARS (20) and to pay a fine of THREE HUNDRED THOUSAND (P300,000.00) PESOS for violation of Section 11, of the same law.

SO ORDERED.[13]

Appellant elevated the judgment of conviction to the Court of Appeals. Before the Court of Appeals, he argued that the trial court erred: (1) in convicting him of the crimes charged despite the prosecution's failure to prove his guilt beyond reasonable doubt; and (2) in giving credence to the testimony of the prosecution witness.[14]

The Office of the Solicitor General (OSG), in lieu of an appellee's brief, filed a Manifestation and Motion for Acquittal.[15] It submitted that there existed reasonable doubt on the culpability of appellant as the identity of the corpus delicti was not sufficiently established and the testimony of the lone prosecution witness, Tougan, was of doubtful veracity.[16] It further maintained that should there be reservations regarding the innocence of appellant, the equipoise rule should apply.[17]

The Court of Appeals in a Decision[18] dated 31 July 2006 in CA G.R. CR-H.C. No. 01227 affirmed with modification the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed DECISION dated November 17, 2004 of the Regional Trial Court of San Mateo, Rizal, Branch 77 is hereby AFFIRMED with MODIFICATION in that the accused-appellant is hereby instead sentenced in Criminal Case No. 6366 to suffer an indeterminate prison term of eight (8) years and one (1) day of prision mayor to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal. Needless to add, the P300,000.00 fine STANDS.

The regulated drug subject of this case is hereby ordered confiscated and forfeited in favor of the Government to be disposed of in accordance with law.

With costs against the accused-appellant.

SO ORDERED.[19]

The Court of Appeals held that absent any arbitrariness or oversight in the appreciation of facts or circumstances of weight and substance, it would not disturb on appeal the trial court's evaluation of the credibility of witnesses. The Court of Appeals, moreover, stated that police officers involved in buy-bust operations are presumed to have performed their duties regularly. The fact that appellant's name was not actually found in the drug-watch list provided by Tougan did not constitute inconsistency nor did it render doubtful his entire testimony. The watch list was brought up by the prosecution only to highlight the fact that appellant was previously involved in the illegal peddling of drugs and that the buy-bust operation was prompted by reliable information.[20]

The Court of Appeals dismissed appellant's defense of frame-up as self-serving and uncorroborated. It ruled that the evidence on record supports his guilt beyond reasonable doubt.[21] The appellate court, however, modified the penalty imposed by the trial court in Criminal Case No. 6366. The appellate court reduced the prison term of twelve (12) years and one (1) day to twenty (20) years, imposed by the trial court, to an indeterminate prison term of eight (8) years and one (1) day of prision mayor to fourteen (14) years, eight (8) months and one (1) day of reclusion temporal. The fine of P300,000.00 stood.[22]

Appellant is now before the Court reiterating his previous submissions. Through his Manifestation (In Lieu of Supplementary Brief)[23] dated 13 April 2007, appellant stated that he had exhaustively argued all the relevant issues in his brief filed before the Court of Appeals. Thus, he manifested that he was adopting it as his supplemental brief. The OSG likewise manifested that it was no longer filing a supplemental brief.[24]

There is merit in the appeal.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required. Corollarily, the prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required quantum of evidence, the defense may logically not even present evidence on its own behalf. In which case, the presumption of innocence shall prevail and hence, the accused shall be acquitted. However, once the presumption of innocence is overcome, the defense bears the burden of evidence to show reasonable doubt as to the guilt of the accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest each upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a criminal charge, but moral certainty is required as to every proposition of proof requisite to constitute the offense.[25]

In the case at bar, the testimony for the prosecution and for the defense are diametrically opposed to each other. The prosecution's version of events solely consisted of Tougan's testimony regarding the buy-bust operation whereas appellant, who cried frame-up, was presented as the lone witness for the defense. In resolving such conflict, which involves the credibility of witnesses, the usual rule is for the Court to respect the findings of the trial court, it having had the opportunity to hear the witnesses themselves and to observe their deportment and manner of testifying during trial. Nonetheless, the rule admits of certain exceptions. Thus, the factual findings of the trial court may be reversed if, by the evidence or the lack of it, it appears that the trial court erred.[26]

The trial court decreed appellant's guilt as follows:

His admission of knowing drug violators in San Mateo, only confirms the fact that he is one of them and his nefarious activities resulted to his several arrest and convictions in two (2) Courts of San Mateo, Rizal.

Accused, himself admitted he was arrested and convicted by RTC Branch 77 San Mateo, Rizal and records of this Court confirms this fact. He averred, thus:

x x x

The two (2) drug cases previously filed with this Court, against the accused were Criminal cases nos. 3483-98 and 3484-98, which resulted to his convictions for possession and drug pushing and was sentenced to a jail term of two (2) years for each case. Two (2) more cases were filed against him with another Court, RTC. Br. 75 for violation of Section 16, R.A. 6425, as amended which also resulted to his convictions and a jail term of one (1) year for each case, docketed as Criminal Case Nos. 3711 and 3819.

Accused allegation (sic) that he was illegally arrested because the police harbored a grudge against him for refusing to continue to be their informer deserves scant consideration. The police has at their disposable several informants who can help them in gathering information in their area of jurisdiction. The loss of one (1) informant will not adversely affect their police operations on illegal drug activities.

Another allegation of the accused that the evidence against him was planted because he came to know their illegal activities in apprehending drug violators by taking their belongings or their money is unsubstantiated by evidence and cannot be given any credence.

x x x

If the policemen planted the drugs as alleged by the accused why did he not tell it to his wife or to any member of his family or to anybody in their community or better still filed (sic) a complaint against the abusive policemen. But not a whimper of the protest was heard from him belying his claim of being framed-up.

The court has ruled in a litany of cases that frame-up, like alibi, is viewed with disfavor for it is self-serving, it can easily be fabricated and is a common standard defense ploy in most prosecution for violations of the Dangerous Drugs Act. Clear and convincing evidence is required to prove the defense, which the accused in this case failed to sustain.

What the police operatives did was in accordance with law and absence of any proof of any wrong-doing or ill-motive, the presumption of regularity in the performance of their official functions prevail.

The elements necessary for the prosecution of illegal sale of drugs have been complied and proven. The identity of the buyer and seller, the object and consideration and the delivery of the thing sold and payment thereto.

In this case the buyer was the prosecution witness Tougan who acted as poseur – buyer and the seller was the herein accused. The object was the shabu sold in consideration of two (2) hundred pesos which was received by the accused. The prohibited drugs confiscated were presented and identified by the prosecution witness in Court, which was not objected to by the defense. No doubt the transaction or sale found in the possession of the accused and they were all presented and identified by the accused with his initials “JLT.”[27]

x x x

In a prosecution for illegal sale of dangerous drugs, the following must be proven: (1) that the transaction or sale took place; (2) the corpus delicti or the illicit drug was presented as evidence; and (3) that the buyer and seller were identified.[28] What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the dangerous drug. The delivery of the contraband to the poseur-buyer and the receipt of the marked money consummates the buy-bust transaction between the entrapping officers and the accused.[29]

An examination of the decision of the trial court reveals that apart from heavily relying on the sole testimony of Tougan, it used appellant’s admission of his previous convictions, his declaration as a police informer and the presumption of regularity of Tougan’s performance of his duties as anchor for finding appellant guilty.

The Court, however, finds such reliance on Tougan’s testimony misplaced. Other than his bare statements, Tougan’s testimony is unsubstantiated by other proof that the alleged buy-bust operation, through which appellant was apprehended, took place. In light of appellant’s theory that he was framed up, it is imperative that the prosecution present more evidence to support Tougan’s allegations. The prosecution could have easily presented the other police officers, namely Arrellano and Pontilla, who Tougan claimed were members of his backup team. As it is, the lack of any other evidence to buttress Tougan’s declaration reduces it into a self-serving assertion. Curiously, the prosecution never offered rebuttal evidence to refute appellant’s defense of frame-up. This omission does not hold well for the cause of the prosecution. It creates doubts on whether there has actually been any buy-bust operation at all.

The Court also agrees with the OSG’s contention that the inconsistencies in Tougan’s testimony on the matter of the list should not be ignored.[30] During trial, when Tougan was asked whether appellant’s name appeared in the list, he categorically answered in the affirmative. Then again, it surfaced that this assertion was untruthful as the list he had brought to court did not contain appellant’s name. The Court believes that Tougan’s lack of candidness on this detail renders the rest of his testimony doubtful.[31]

Moreover, the Court finds that the trial court erred in allowing Tougan to use the mantle of regularity of official functions to prop up his allegations. The presumption of regularity in the performance of official duty cannot by

itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. As the Court ruled in *People v. Ambrosio*:^[32]

The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because, [f]irst, the presumption is precisely just that—a mere presumption. Once challenged by evidence, as in this case, x x x [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.^[33]

While buy-bust operations deserve judicial sanction if carried out with due regard for constitutional and legal safeguards, it is well to recall that —

x x x by the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellant's guilt. It should have given more serious consideration to the pros and cons of the evidence offered by both defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.^[34]

Consequently, courts are required to put the prosecution evidence through the crucible of a severe testing, and the presumption of innocence requires them to take a more than casual consideration of every circumstance or doubt favoring the innocence of the accused.^[35]

Significantly, the Court agrees with the OSG's observation that the identity of the corpus delicti has not been sufficiently established. Tougan's testimony does not definitively express that the confiscated plastic sachets of shabu have been marked/initialed at the scene of the crime, according to proper procedure. Tougan testified as follows:

PUBLIC PROS. MAJOMOT

Q

After that, what did you do after you recovered or confiscated these plastic sachets from the accused?

A

After he was arrested, sir, we brought him to the police station.

Q

After that, what happened next?

A

When we reached the police station, sir, he gave his name as Salvador Santos.

Q

What happened to the plastic sachets?

A

I wrote my initials on all the plastic sachets or the evidence confiscated from him, sir, and a document was

prepared for them to be examined at the PNP Crime Laboratory.[36]

The case of *People v. Lim*[37] specifies that any apprehending team having initial control of illegal drugs and/or paraphernalia should, immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. The failure of the agents to comply with such a requirement raises doubt whether what was submitted for laboratory examination and presented in court was the same drug and/or paraphernalia as that actually recovered from the accused. It negates the presumption that official duties have been regularly performed by the police officers.

On the point that appellant has previously been charged with and convicted of similar offenses, the Court believes that the trial court wrongly considered such circumstance for the purpose of showing that he was likely to commit the crimes charged in the indictment. Evidence of collateral offenses must not be received as substantive evidence of the offenses on trial.[38]

Concededly, the evidence of the defense is weak and uncorroborated. This, however, cannot be used to advance the cause of the prosecution as the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense.[39] Moreover, when the circumstances are capable of two or more inferences, as in this case, such that one of which is consistent with the presumption of innocence and the other is compatible with guilt, the presumption of innocence must prevail and the court must acquit.[40]

All told, given the attendant circumstances, the Court entertains serious doubts as to the culpability of appellant and its mind cannot rest easily upon the certainty of his guilt.

WHEREFORE, the Decision dated 17 November 2004 of the Regional Trial Court of San Mateo, Rizal, Branch 77 in Criminal Case Nos. 6365 and 6366 is REVERSED and SET ASIDE. Appellant SALVADOR SANTOS, JR. y SALVADOR is ACQUITTED of the crimes charged on the ground of reasonable doubt and ordered immediately RELEASED from custody, unless he is being held for some other lawful cause.

The Director of the Bureau of Corrections is ORDERED to implement this decision forthwith and to INFORM this Court, within five (5) days from receipt hereof, of the date appellant was actually released from confinement. Costs de officio.

SO ORDERED.

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

[1] Otherwise known as the “Comprehensive Dangerous Drugs Act of 2002.”

[2] Records, Criminal Case No. 6365, p. 1.

[3] Records, Criminal Case No. 6366, p. 1.

[4] Records, Criminal Case No. 6365, p. 13.

[5] TSN, 3 September 2003, pp. 4-13.

[6] Id. at 22.

[7] TSN, 9 December 2003, pp. 5-9.

[8] TSN, 25 May 2004, pp. 2-6.

[9] Id. at 6.

[10] Id. at 7-11.

[11] Id. at 12-13.

[12] CA rollo, pp. 13-23; Penned by Honorable Francisco C. Rodriguez, Jr., now an Associate Justice of the Court of Appeals.

[13] Id. at 22-23.

[14] Id. at 43.

[15] Id. at 75-104.

[16] Id. at 82.

[17] Id. at 101.

[18] Rollo, pp. 2-19; Penned by Associate Justice Martin S. Villarama, Jr., with the concurrence of Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo.

[19] Id. at 18-19.

[20] Id. at 16.

[21] Id. at 17.

[22] Id. at 18-19.

[23] Id. at 21-22.

[24] Id. at 26-27, Manifestation and Motion dated 22 May 2007.

[25] *People v. Uy*, 392 Phil. 773, 782-783 (2000).

[26] *People v. Tan*, 432 Phil. 171; 181-182 (2002).

[27] CA rollo, pp. 19-22; Emphasis supplied.

[28] *People v. Bandang*, G.R. No. 151314, 3 June 2004, 430 SCRA 570, 579.

[29] *People v. Zeng Hua Dian*, G.R. No. 145348, 14 June 2004, 432 SCRA 25, 34.

[30] CA rollo, p. 93.

[32] G.R. No. 135378, 14 April 2004, 427 SCRA 312, 318, citing *People v. Tan*, 382 SCRA 419 (2002).

[33] Id. at 318.

[34] *People v. Tan*, 401 Phil. 259, 273 (2000), citing *People v. Gireng*, 241 SCRA 11 (1995).

[35] *People v. Tan*, G.R. No. 129376, 29 May 2000, 382 SCRA 419, 445.

[36] TSN, 3 September 2003, p. 12.

[37] G.R. No. 141699, 7 August 2002, 386 SCRA 581, 597-598 citing the Dangerous Drugs Board Regulation No. 3, Series of 1979 as amended by Board Regulation No. 2, S. 1990.

[38] FRANCISCO, R.J. EVIDENCE RULES 128-134 (1966 ed.), p. 235, citing 20 Am. Jur. 288-289.

[39] People v. Samson, 421 Phil. 104, 122 (2001).

[40] People v. Batocoy, 449 Phil. 500, 521 (2003)

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