

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO MACABARE Y LOPEZ, ACCUSED-APPELLANT.

G.R. No. 179941. August 24, 2009

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

This is an appeal from the June 26, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00661 entitled *People of the Philippines v. Lito Macabare y Lopez*, which affirmed the Decision of Branch 35 of the Regional Trial Court (RTC) in Manila in Criminal Case No. 01-191383 finding accused-appellant Lito Macabare guilty of violation of Section 16 of Republic Act No. (RA) 6425 or The Dangerous Drugs Act of 1972.

The Facts

The Information filed against Macabare reads:

That on or about January 18, 2001, in the City of Manila, Philippines, the said accused, without being authorized by law to possess or use [any] regulated drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) transparent plastic bag containing FOUR HUNDRED TEN POINT SIX (410.6) grams of white crystalline substance known as "shabu" containing methamphetamine hydrochloride, a regulated drug, without the corresponding license or prescription thereof.

Contrary to law.[1]

Upon his arraignment, Macabare gave a not guilty plea. Trial ensued and the prosecution presented Senior Jail Officer II (SJO2) Arnel V. Sarino and Forensic Chemist Emilia Andeo-Rosales as witnesses. The defense presented Macabare as lone witness.

Version According to the Prosecution

Macabare, a detention prisoner charged with kidnapping, had been at the Manila City Jail since 1995. He was assigned to Cell No. 2 which sheltered 200 inmates. The cell was further divided into 30 cubicles or kubols. Each kubol had its own sliding door and improvised locks.[2]

On January 18, 2001, between 11 and 12 o'clock in the evening, Inspector Alvin Gavan received a confidential report that shabu had been smuggled into the Manila City Jail and hidden in Cell No. 2. A team was thus sent to inspect all the kubols in the said cell. All the inmates were ordered to line up outside while the inspection was being conducted. SJO2 Sarino reached Macabare's kubol. He was the lone occupant. A Coleman cooler was found in the kubol and it had a folded towel on top. When SJO2 Sarino spread out the towel he found a plastic bag inside which contained a white crystalline substance. The team suspected the substance to be shabu and then brought Macabare to the office for further investigation.[3]

City Jail Warden Macumrang Depantar sent the suspected shabu to the National Bureau of Investigation laboratory through his authorized personnel. The seized white crystalline substance was later confirmed to be

shabu or methylamphetamine hydrochloride.[4]

Version of the Defense

Macabare denied ownership or knowledge of the confiscated shabu. He testified that he was strolling outside his kubol close to midnight on January 18, 2001 when some jail personnel came and instructed all the inmates of Cell No. 2 to get out of bed and go outside. A short while later, SJO2 Sarino discovered a packet of shabu near Macabare's chair. Macabare was, thus, forcibly brought to the office for investigation. He denied owning the contraband and averred that a lot of inmates slept at his kubol at will.[5]

The Ruling of the Trial Court

On November 16, 2001, the trial court rendered judgment against Macabare. It found that the prosecution offered sufficient circumstantial evidence to sustain a finding of guilt beyond reasonable doubt. The trial court noted that Macabare's unconfirmed defense of alibi was weak and could not outweigh the positive probative value of the prosecution's evidence. The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is rendered pronouncing accused LITO MACABARE y LOPEZ guilty beyond reasonable doubt of possession of 410.60 grams of methylamphetamine hydrochloride without license or prescription therefor, and sentencing said accused to reclusion perpetua and to pay a fine of P5,000,000.00 plus the costs.

x x x x

SO ORDERED.

Macabare appealed the RTC Decision to this Court. We, however, transferred his appeal to the CA pursuant to *People v. Mateo*.^[6]

Before the CA, Macabare argued that it was error on the trial court's part to have found him guilty on the basis of mere circumstantial evidence.

The Ruling of the CA

On June 26, 2007, the CA affirmed the RTC Decision with a modification on Macabare's pecuniary liability. It ruled that the circumstances provided by the prosecution satisfied the requirements found in the Rules on Evidence and proved the elements of the offense of possession of illegal drugs. Moreover, the appellate court agreed with the RTC's finding that credence should be given to the straightforward and consistent testimonies of the prosecution witnesses rather than Macabare's bare denial. It likewise observed that the police officers who testified were not shown to have been moved by some improper motive against Macabare. The fine imposed on Macabare was reduced considering that he was a detention prisoner and the quantity of the shabu confiscated from him.

The CA disposed of the case as follows:

WHEREFORE, in view of the foregoing premises, We resolve to DISMISS the appeal and AFFIRM the Decision dated November 16, 2001 of the RTC in Manila with the modification that the fine imposed is reduced from P5,000,000.00 to P500,000.00.

IT IS SO ORDERED.[7]

On July 18, 2007, Macabare filed a Notice of Appeal notifying the CA that he was appealing his conviction before this Court.

On January 23, 2008, this Court required the parties to submit supplemental briefs if they so desired. The People,

through the Office of the Solicitor General (OSG), manifested its willingness to submit the case on the basis of the records already submitted. Macabare, on the other hand, raised and reiterated his arguments for his acquittal in his Supplemental Brief.[8]

The Issues

I

WHETHER THE SET OF CIRCUMSTANTIAL EVIDENCE ESTABLISHED BY THE PROSECUTION IS INSUFFICIENT TO PRODUCE A CONVICTION, BEYOND REASONABLE DOUBT, THAT THE DRUGS FOUND IN THE KUBOL OF ACCUSED-APPELLANT WERE HIS;

II

WHETHER THE ACCUSED-APPELLANT'S PRESUMPTION OF INNOCENCE SHOULD PREVAIL OVER THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS BY PUBLIC OFFICERS.

In his appeal, Macabare disputes the finding that the 410.6 grams of shabu found in Cell No. 2 belonged to him. He explains that the arrangement in each cell is such that his cubicle or kubol had many occupants. Other inmates, especially old-timers, slept in the kubol with him. He argues that it was possible then for the Coleman cooler to have been placed inside his kubol by some inmates who were frightened by the surprise inspection by the jail officers. He emphasizes that the prosecution failed to establish that the Coleman cooler was even his. The evidence of the prosecution, he claims, was, therefore, weak and did not overcome the presumption of innocence he enjoys.

The OSG, on the other hand, stresses that all the circumstances shown by the prosecution are enough to convict Macabare. In contrast, the OSG asserts, Macabare was not able to adequately explain the presence of the shabu in his kubol. Such failure showed that the defense was not able to overturn the disputable presumption that things which a person possesses or over which he exercises acts of ownership are owned by him. The OSG also contends that Macabare's defenses of frame-up and alibi are unsubstantiated by clear and convincing evidence.

The Court's Ruling

We affirm Macabare's conviction.

Circumstantial Evidence

To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Circumstantial evidence on record will be sufficient to convict the accused if it shows a series of circumstances duly proved and consistent with each other. Each and every circumstance must be consistent with the accused's guilt and inconsistent with the accused's innocence.[9] The circumstances must be proved, and not themselves presumed.[10]

The appellate court, in affirming Macabare's conviction, relied on the following circumstantial evidence: First, Macabare was assigned a kubol inside Cell No. 2. This served as his quarters. Second, he was the lone occupant assigned to the kubol. Third, when the inspection team reached Macabare's kubol inside Cell No. 2, SJO2 Sarino spotted a Coleman cooler. He discovered a plastic pack wrapped in a towel which was on top of the cooler. Fourth, the plastic pack contained white crystalline granules which later tested positive for shabu. And last, Macabare was not able to explain how the plastic pack containing the shabu ended up in his kubol. These circumstances were duly proved at the trial and are consistent with a finding of guilt. This set of circumstances

sufficiently leads one to conclude that Macabare indeed owned the contraband. Moreover, the prosecution was able to show Macabare's liability under the concepts of disputable presumption of ownership and constructive possession.

The defense failed to disprove Macabare's ownership of the contraband. They were unable to rebut the finding of possession by Macabare of the shabu found in his kubol. Such possession gave rise to a disputable presumption under Sec. 3(j), Rule 131 of the Rules of Court, which states:

Sec. 3. Disputable presumptions. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him

Constructive possession can also be inferred from the circumstantial evidence presented. The discussion found in *People v. Tira*[11] clearly explains the concept:

x x x This crime is mala prohibita, and as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (animus possidendi) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drugs is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.

In Macabare's case, the defense was not able to present evidence refuting the showing of animus possidendi over the shabu found in his kubol. Macabare's insistence that someone else owned the shabu is unpersuasive and uncorroborated. It is a mere denial which by itself is insufficient to overcome this presumption.[12] The presumption of ownership, thus, lies against Macabare. Moreover, it is well-established that the defense of alibi or denial, in the absence of convincing evidence, is invariably viewed with disfavor by the courts for it can be easily concocted, especially in cases involving the Dangerous Drugs Act.[13]

Presumption of Regularity

Macabare claims also that the rebuttable presumption that official duty has been regularly performed cannot by itself prevail over the presumption of innocence that an accused enjoys. This claim is valid to a point. Indeed, the constitutional presumption of innocence assumes primacy over the presumption of regularity.[14] We cannot, however, apply this principle to the instant case. The circumstantial evidence imputing animus possidendi to Macabare over the prohibited substance found in his kubol coupled with the presumption of regularity in the

performance of official functions constitutes proof of guilt of Macabare beyond a reasonable doubt. More so, the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive[15] in falsely imputing a serious crime to Macabare.[16]

Macabare was charged with a serious offense and yet he did not bother to present any motive for the jail officers to falsely accuse him. According to him, he has no idea why the jail officers would be singling him out as the owner of over 400 grams of shabu.[17] He also could not explain the presence of a packet of shabu found near his bed. He did not question the prosecution's assertion that he was the sole inmate assigned to the kubol where the shabu was found; although he claimed that there were also other people, more or less 20 different inmates, who would sleep there.[18] He simply denied ownership of the shabu and the cooler and towel found with it without adducing evidence to fortify his claim that other inmates had access to his kubol and could have placed the stash of shabu near his bed to avoid getting caught. Macabare, indeed, has not presented a strong defense to the crime charged.

SJO2 Sarino, on the other hand, gave a straightforward and detailed testimony on the discovery of the shabu in Macabare's cubicle:

Prosecutor Senados

Q: Now, [after] you were constituted as the team to conduct search on cell no. 2, do you recall if there were preparations that you made before you implement your duty?

A: There [were], sir.

Q: What were these preparations?

A: We first prepared the sketch of the said cell and then we were [each] positioned in [a] strategic place [for entry]. [We] also brought with us flashlight just in case there will be unexpected brown out, sir.

Q: Now, Mr. witness, since you said you were assigned at the said strategic place, where were you designated?

A: I was placed at the back door of cell no. 2, sir.

Q: Now, after the preparations were made, what happened?

A: We went to the said cell, sir.

Q: What happened when you entered cell no. 2?

A: Immediately, we asked the inmates therein to fall in line, sir.

Q: And after... after they were made to fall in line, what happened?

A: We conducted [the inspection] [at] their respective "kubol," sir.

Q: Do you recall how many cubicles you [were] able to search Mr. witness?

A: I was able to search five (5) kubols, sir.

Q: And what did you find inside these five (5) kubols that you searched?

A: In one of the [kubols] occupied by the inmate [I] was able to find shabu, sir.

Q: How would you describe the shabu that you discovered inside the kubol?

A: When I was conducting search on the kubol, incidentally, I pulled this [Coleman], sir.

Q: Where was it placed?

A: Inside that kubol, sir.

Q: So, now, what happened after you pulled out that cooler?

A: I saw a towel inside, sir.

Q: And where was the towel placed?

A: [When] I folded this towel, this towel was folded this way placed on top of the [Coleman] and what I did [was] to feel it, sir.

Q: Now, when you felt the towel, what happened?

A: I opened it and then I found suspected shabu, sir.

Q: And this suspected shabu, where was this placed?

A: Inside the folded towel, sir.

Q: Now, was it contained in some form of container or was it just wrapped by the said towel?

A: It is contained in a transparent plastic bag which was [sealed], sir.

Q: Now, Mr. witness, is that [cooler] that you are showing us the same cooler that you found inside the kubol?

A: Yes sir.

Q: And is that towel that you are showing us the same towel that you found on top of that cooler?

A: Yes, sir.

x x x x

Q: By the way, do you recall who opened that or who was the occupant of that kubol from where you found the shabu you mentioned?

A: After we [found] this, we immediately inquired who [the] occupant of that kubol [was] and then an inmate by the name of Lito Macabare y Lopez admitted it, sir.

Q: Now this Lito Macabare, is he present this morning?

A: Yes, sir.

Q: If you are asked to identify him, will you be able to do so?

A: Yes, sir.

x x x x

(at this juncture, the witness stepped down from the witness stand, approached a certain person inside the courtroom and tapped his shoulder and mentioned the name Lito Macabare)

x x x x

Q: Now, after that Mr. witness, what did you do, if any?

A: We invited him to our office, sir.

Q: When you say your office, you are referring to the intelligence branch?

A: Yes, sir, I.I.B.

Q: Now, Mr. witness, what happened after you invited him to your office?

A: We [had] him undergo investigation, sir.

Q: How, Mr. witness?

A: We asked him if he is the owner of the shabu that was confiscated, sir.

Q: Now, how about the owner of the kubol, did you also ask him?

A: Yes, sir.

Q: What were his answers to your queries?

A: He is the one, sir.

Q: So, Mr. witness, this shabu that you said you found inside the kubol of Mr. Macabare, [if that] is shown to you again or the plastic containing the shabu, if that is shown to you again, can you still identify it?

A: Yes, sir.

Q: What would be your basis in identifying it?

A: We placed the markings, sir.

Q: Who exactly placed the markings?

A: I myself placed the markings, sir.

Q: And what were the markings that you placed on it?

A: Letters "L.M.L." [which] stand for "Lito Macabare y Lopez," sir.

Q: Mr. witness, I'm showing you a [transparent] plastic containing brownish crystalline substance, will you please examine this and tell us if that is the one that you were mentioning[?]

A: This is the one, sir.

x x x x

Prosecutor Senados

We would like to manifest, Your Honor, that the [transparent] plastic identified by the witness has the markings, "LML," Your Honor.

Q: What else happened at the IIB office Mr. witness?

A: We forwarded that item to the NBI for laboratory examination, sir.[19]

The positive and categorical testimony of SJO2 Sarino satisfactorily proves Macabare's guilt of illegal possession of shabu. We agree with the CA when it ruled that Macabare's mere denial cannot outweigh circumstantial evidence clearly establishing his participation in the crime charged. It is well-settled that positive declarations of a prosecution witness prevail over the bare denials of an accused.[20] The evidence for the prosecution was found by both the trial and appellate courts to be sufficient and credible while Macabare's defense of denial was weak, self-serving, speculative, and uncorroborated. An accused can only be exonerated if the prosecution fails to meet the quantum of proof required to overcome the constitutional presumption of innocence.[21] We find that the

prosecution has met this quantum of proof in the instant case.

All told, we sustain the findings of both the RTC and the CA. The trial court's determination on the issue of the credibility of witnesses and its consequent findings of fact must be given great weight and respect on appeal, unless certain facts of substance and value have been overlooked which, if considered, might affect the result of the case. We defer to its findings since, simply put, they can easily detect whether a witness is telling the truth or not.[22]

As to the fine imposed on Macabare, the appellate court, citing *People v. Lee*,[23] reduced it from PhP 5 million to PhP 500,000 in view of the quantity of the shabu (410.6 grams) involved. We affirm the CA's modification of the fine imposed as it is within the range prescribed by RA 6425, as amended.[24]

WHEREFORE, the appeal is DENIED. The CA Decision in CA-G.R. CR-H.C. No. 00661 finding accused-appellant Lito Macabare guilty beyond reasonable doubt of violating Sec. 16 of RA 6425 is AFFIRMED.

SO ORDERED.

Chico-Nazario,[*](Acting Chairperson), Carpio Morales,** Nachura, and Peralta, JJ., concur.

[*] As per Special Order No. 678 dated August 3, 2009.

[**] Additional member as per Special Order No. 679 dated August 3, 2009.

[1] CA rollo, p, 49.

[2] Rollo, pp. 4-5.

[3] Id. at 5.

[4] CA rollo, p. 50.

[5] Id.

[6] G.R. Nos. 14678-87, July 7, 2004, 433 SCRA 640.

[7] CA rollo, p. 53. Penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Bienvenido L. Reyes and Aurora Santiago-Lagman.

[8] Rollo, p. 22.

[9] *Aoas v. People*, G.R. No. 155339, March 3, 2008, 547 SCRA 311, 318.

[10] Id.; citing *Francisco*, Evidence 605.

[11] G.R. No. 139615, May 28, 2004, 430 SCRA 134, 151.

[12] *People v. Hindoy*, G.R. No. 132662, May 10, 2001, 357 SCRA 692, 706.

[13] *People v. Del Mundo*, G.R. No. 138929, October 2, 2001, 366 SCRA 471, 485.

[14] *People v. Timtiman*, G.R. No. 101663, November 4, 1992, 215 SCRA 364, 374.

[15] See *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 454.

[16] See *People v. Bayani*, G.R. No. 179150, June 17, 2008, 554 SCRA 741, 753.

[17] TSN, September 27, 2001, p. 10.

[18] Id. at 9.

[19] TSN, September 18, 2001, pp. 4-8.

[20] People v. Mateo, G.R. No. 179036, July 28, 2008, 560 SCRA 375, 390.

[21] Su Zhi Shan v. People, G.R. No. 169933, March 9, 2007, 518 SCRA 48, 65.

[22] Mateo, supra note 20, at 394.

[23] G.R. No. 140919, March 20, 2001, 354 SCRA 745, 754-755.

[24] Lee, id. Secs. 16 and 17 of RA 6425, as amended, pertinently provide:

Sec. 16. Possession or Use of Regulated Drugs.--The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos [PhP 500,000] to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

Sec. 17. Section 20, Article IV of Republic Act No. 6425, as amended, known as the Dangerous Drugs Act of 1972, is hereby amended to read as follows:

Sec. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime.--The penalties for offenses under Section 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

x x x x

3. 200 grams or more of shabu or methylamphetamine hydrochloride. (Emphasis supplied.)

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