

JULIUS CACAO Y PRIETO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 180870. January 22, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

In order to safeguard its citizenry from the harmful effects of dangerous drugs on their physical and mental well-being, the State pursued an intensive and unrelenting campaign against the trafficking and use of dangerous drugs and other similar substances.[1] However, in our desire to totally eradicate this social ill, we must adhere to the constitutional pronouncement that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved.[2] This case illustrates once more our faithful adherence to said constitutional requirement.

Factual Antecedents

For review is the Decision[3] of the Court of Appeals (CA) in CA-G.R. CR

No. 29985 dated July 27, 2007 affirming in toto the Decision[4] of the Regional Trial Court (RTC) of Laoag City, Branch 13 in Criminal Case No. 11489-13 dated November 25, 2005 finding herein petitioner Julius Cacao y Prieto (Cacao) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act (RA) No. 9165 (The Comprehensive Dangerous Drugs Act of 2002) and sentencing him to suffer the penalty of imprisonment ranging from 12 years and one day to 15 years and ordering him to pay a fine of P400,000.00. Also assailed is the Resolution[5] of the CA dated December 11, 2007 denying the motion for reconsideration.

On October 15, 2004, two separate informations were filed against Joseph Canlas y Naguit[6] and Cacao[7] indicting them for violation of Section 11, Article II of RA 9165 before the RTC of Laoag City. Insofar as pertinent to this petition, we shall quote the information only against Cacao in Criminal Case No. 11489-13 which reads:

That on or about the 14[th] day of October, 2004, at Laoag City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously [sic] have in his possession, control and custody 1 plastic sachet of methamphetamine hydrochloride or shabu containing a total of 1.6 grams including plastic sachets [sic] without any license or authority, in violation of the aforesaid law.

CONTRARY TO LAW.[8]

When arraigned on November 30, 2004, Cacao pleaded not guilty.[9] Thereafter trial on the merits followed.

The inculpatory facts, as unveiled by the prosecution in its evidence given during the trial, were briefly synthesized by the Office of the Solicitor General, viz:

On October 14, 2004, at around 7:45 in the evening, Police Officer 3 (PO3) Celso Pang-ag of the Intelligence and Operation Section of the Laoag City Police Station received a telephone call from an informant about a drug session being held inside Room 5 of the Starlight Hotel located at Barangay 5, Ablan Avenue, Laoag

City.

Acting on the information, PO3 Pang-ag, together with PO2 Jonel Mangapit, went immediately to the Starlight Hotel to determine the veracity of the report. Upon arrival at the target area, PO3 Pang-ag and PO2 Mangapit approached the lady clerk manning the information counter of Starlight Hotel and inquired about the alleged drug session at Room 5 of the hotel.

The lady clerk informed PO3 Pang-ag and PO2 Mangapit that the roomboy of the hotel was about to deliver a softdrink to Room 5 and they could follow him if they [so wish]. Thus, PO3 Pang-ag and PO2 Mangapit followed the roomboy to Room 5. Upon arrival, the roomboy knocked at the door and a woman, later identified as Mylene, opened the door wide enough to enable the police officers to look inside.

PO3 Pang-ag and PO2 Mangapit saw petitioner seated on top of the bed sniffing "shabu" while Joseph Canlas was on the floor assisting petitioner sniffing "shabu". At this juncture, PO3 Pang-ag and PO2 Mangapit arrested petitioner and Joseph and confiscated from them the drug paraphernalia, glass tooter, scissors, lighters and plastic sachets.

PO2 Mangapit frisked petitioner and recovered from him one plastic sachet containing "shabu".

After informing petitioner and Joseph of their constitutional rights, PO3 Pang-ag and PO2 Mangapit brought them to the Laoag City Police Station and turned them over to the police officer on duty while the confiscated items were turned over to SPO3 Loreto Ancheta.

The Philippine National Police (PNP) laboratory conducted an examination on the specimen recovered from appellant and his companion which tested positive for "shabu".[10]

Cacao professed his innocence and presented his defense in this wise:

In the afternoon of 14 October 2004, petitioner was waiting for a ride going home along the National Road at the rotunda of San Nicolas, Ilocos Norte. Joseph Canlas [who was on his way to] Laoag City aboard his motorcycle x x x pulled over and asked the petitioner if the latter could spare a moment to estimate a work he wanted to be done in his house. Admittedly, the petitioner is a contractor. Petitioner agreed and they both boarded Canlas' motorcycle for Laoag City.

While in Laoag City, petitioner and Canlas stopped at the public market for the latter to collect [loan payment] as he is also a money lender. Petitioner stayed [by] Canlas' motorcycle. When Canlas returned, it was then that they decided to have "chicks" (or womanize). They then proceeded to Starlight Hotel located along Ablan Ave., Laoag City on board Canlas' motorcycle.

x x x at the Starlight Hotel, petitioner asked for a room and [was given] Room 5 x x x. Thereafter, Canlas stayed inside Room 5 while petitioner went out to the hotel's counter to wait for the woman they [had] contacted. Present at the counter at the time was the lady cashier [named] Cherry Corpuz.

In about thirty (30) minutes, a tricycle-for-hire arrived with a man and a woman on board as passengers. The tricycle went inside the hotel and stopped right in front of the counter where the petitioner and the lady cashier were. After alighting from the tricycle, the woman companion inquired where Room 5 is [and was directed] by the lady cashier. The woman [who] alighted from the tricycle in the company of another male person was later on identified to be Mylene Daquioag. Thereafter, Mylene Daquioag proceeded to Room 5 while the male companion stayed behind with the petitioner at the hotel's counter. When petitioner could not wait [any] longer because there was only one woman who arrived, he x x x asked the male companion of Mylene Daquioag if another woman is coming. The male companion answered in the negative. A couple of minutes [later], petitioner followed to Room 5 so he could [sic] go home instead because it was then getting late.

Upon entering the room, petitioner saw Mylene Daquioag and Canlas seated at the table inside the room. He

also saw Mylene Daquioag offer something contained in plastic x x x to Canlas. The latter refused as he said it is a woman that he was asking [for].

Barely a moment after entering Room 5, the two then heard a knock on the door from the outside. Mylene Daquioag immediately stood up and told the petitioner and Canlas that "they are (her) companions".

As soon as the door was unlocked by Mylene Daquioag, several policemen barged inside the room with their guns drawn out. Petitioner was shoved to the bed by one of the police. He was later bodily searched but nothing was found from [sic] him except his wallet containing cash of about P 7,000.00. The wallet was later turned over to the petitioner's wife at the Police Station of Laoag, City. The P7,000.00 was never seen again.

As petitioner was made to sit at [sic] the bed, one of the police officers pointed to a plastic sachet on the floor. It was about two (2) meters away from him and about a meter from the police pointing [to] it. The same police then explained that the plastic sachet belongs to the petitioner. Immediately, petitioner cried foul on the assertion.

Due to the suddenness of events, the petitioner was not as much as able to notice what the other police did to Canlas.

Without much ado, the petitioner and Canlas were apprehended, handcuffed and brought to the Laoag City Police Station. Charges were later on filed against them.[11]

Ruling of the Regional Trial Court

On November 25, 2005, the trial court rendered its judgment finding Cacao guilty of the offense charged and sentenced him accordingly, viz:

WHEREFORE x x x

The accused Julius Cacao is likewise found GUILTY beyond reasonable doubt as charged of illegal possession of methamphetamine hydrochloride weighing 1.3987 grams in Criminal Case No. 11489 and is therefore sentenced to suffer the indeterminate penalty of imprisonment from TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS and to pay the fine of Four hundred thousand (P400,000.00) pesos, Philippine Currency.

The sachets of shabu confiscated from the accused are all confiscated in favor of the Government, the same to be disposed as the law prescribes. Cost de oficio.

SO ORDERED.[12]

Ruling of the Court of Appeals

Aggrieved by the Decision of the trial court, Cacao interposed an appeal to the CA. On July 27, 2007, the appellate court rendered judgment affirming Cacao's conviction. It held that the circumstances obtaining in this case validly cloaked the arresting officers with the authority to search and seize any contraband or prohibited material which may be used as proof of the offense of which Cacao is charged. It also ruled that there is no proof that the police officers compelled Cacao to admit a crime. As to the alleged contradictory statements, the appellate court ruled that they refer only to minor details which are not sufficient to overthrow the probative value accorded them by the trial court.

Petitioner moved for reconsideration[13] but the motion was denied by the appellate court in its Resolution[14] dated on December 11, 2007.

Issues

In this petition, Cacao ascribes to the trial court the following errors:

- The lower court gravely erred in ruling that the guilt of the accused was proven beyond reasonable doubt considering the myriad material inconsistencies, discrepancies, and incredible statements in the prosecution evidence.[15]
- The lower court gravely erred in failing to lend credence to the critical testimony of Benedict Villanueva.[16]
- The lower court erred in not finding that the crucial first link in the chain of custody of the specimen subjected for examination was not proven.[17]
- The lower court gravely erred in declaring that the defense of frame-up cannot be given weight.[18]
- The lower court gravely erred in relying on the weakness of the defense.[19]
- The lower court gravely erred in failing to find that the presumption of innocence of the petitioner stands un rebutted, hence, his conviction is erroneous.[20]

Our Ruling

We find merit in the petition.

As a general rule, factual findings and conclusions of the trial court and the CA are entitled to great weight and respect and will not be disturbed on appeal. However, if there is any indication that the trial court overlooked certain facts or circumstances which would substantially affect the disposition of the case,[21] we will not hesitate to review the same. In this case, we find it imperative to review the factual findings of the trial court because of certain inconsistencies in the testimonies of the prosecution witnesses on material points.

Jurisprudence holds that in prosecution of cases involving illegal possession of prohibited drugs, the prosecution must establish with moral certainty the elemental act of possession of a prohibited substance coupled with the fact that such possession is not authorized by law. Essential, however, in a drug-related case is that the identity of the dangerous drug be established beyond reasonable doubt.[22] Since the dangerous drug constitutes the corpus delicti of the offense and the fact of its existence is vital to a judgment of conviction,[23] it behooves upon the prosecution to establish and prove with certainty that the dangerous drug presented in court as evidence against the accused is the same item recovered from his possession.

We have scrutinized in detail the testimonies of the prosecution witnesses and found not only glaring inconsistencies on material points but more importantly a failure to identify indubitably the prohibited drug allegedly confiscated from Cacao.

The testimonies of the prosecution's principal witnesses are inconsistent as to who delivered the prohibited drug to the evidence custodian.

PO3 Celso Pang-ag (Pang-ag) and PO2 Jonel Mangapit (Mangapit) both testified that it was the latter who brought the item confiscated from petitioner to the evidence custodian, SPO3 Loreto Ancheta (Ancheta). Thus:

Q:

What about the two plastic sachets you confiscated from the possession of the accused Joseph and the one plastic sachet which Jonel Mangapit confiscated from the possession of Julius Cacao as well as the drug paraphernalia you mentioned, what did you do with them?

A:

We turned over the confiscated drug paraphernalia and the one I confiscated to the evidence custodian, SP03 Loreto Ancheta and the one confiscated by P02 Mangapit was also turned over by him to the evidence custodian, sir.

Q:

Who was the evidence custodian whom you and Jonel Mangapit turned over the items you said?

A:

SPO3 Loreto Ancheta, Sir.[24]

Mangapit corroborated Pang-ag's testimony that it was he who delivered to Ancheta the item he seized from Cacao. Thus:

Q:

How about the one big plastic sachet you were able to seize from the right front pocket of accused Cacao, what did you do?

A:

I turned it over to the evidence custodian, Sir.

Q:

Who was that evidence custodian to whom you turned over that plastic sachet?

A:

SP02 Loreto Ancheta, Sir.[25]

The foregoing assertions are totally at odds with the testimony of Ancheta, the evidence custodian. The latter denied that it was Mangapit who delivered the item allegedly recovered from Cacao. Instead, he repeatedly and categorically declared that it was SP03 Balolong (Balolong) from whom he received the plastic sachet of shabu.

Q:

Who delivered to you the specimen allegedly confiscated from the possession of Cacao?

A:

SP03 Balolong, Sir.[26]

During his cross-examination, Ancheta confirmed his declaration that it was Balolong and definitely not Mangapit who handed to him the plastic sachet of shabu. Ancheta testified thus:

Q:

You said that it was officer Balolong who handed to you the plastic sachet of shabu which was allegedly taken from the possession of accused Julius Cacao, did I hear you right?

A:

Julius Cacao, yes sir.

Q:

It was not officer Mangapit who handed to you the plastic sachet of shabu?

A:

Balolong, sir.

Q:

It was not Mangapit?

A:

No sir.[27]

When confronted with the afore-quoted testimony of Ancheta, Mangapit cannot explain the variance. He just gave a sweeping answer "I do not know".[28]

We cannot understand why the courts below did not doubt or suspect the patently inconsistent and contradictory testimonies of the principal witnesses of the prosecution. Contrary to the findings of the appellate court, we are of the considered view that this contradiction is not so inconsequential or minor but a discrepancy touching on substantial and significant matter which could well affect the credibility of the witnesses.

The prosecution failed to satisfactorily establish that the item presented in court was the same item confiscated from Cacao.

The patent inconsistency between the testimonies of Mangapit and Pang-ag, on one hand, and the testimony of Ancheta on the other hand, necessarily leads us to doubt that the plastic sachet of shabu identified in court is the same item that was allegedly seized and confiscated from petitioner. If the version of Mangapit is to be believed, then the most lamentable aspect pertains to his failure to identify the seized item with certainty. For sure Mangapit, who is the most competent person to make the proper identification being the officer who confiscated the item from Cacao, never actually identified the same:

Q:

If shown to you again that one big plastic sachet where you put markings would you be able to recognize and identify the same?

A:

Yes, sir.

Q:

Giving to you an already opened brown envelope with several contents, will you please sort out [the] contents and bring out that big plastic sachet you claimed you confiscated from the custody of accused Cacao?

A:

(Witness sorting out the contents of the plastic bag containing several items). (Witness examining the plastic sachet mounted on the bond paper marked as Exhibit B-1).

Q:

Are the markings you claimed which were placed in the plastic sachet still visible and readable?

A:

Yes, sir.

Q:

Will you please read for record purposes the markings?

A:

Initial JPC and my signature, sir.

(Witness pointing to the initials and signature written on a darker masking tape on the plastic sachet).[29]

Verily, there was no actual and effective identification of the subject specimen. After sorting out the contents of the plastic bag, witness Mangapit merely pointed to the initial and signature written on a masking tape attached to the plastic sachet. At no instance did he make a categorical and accurate declaration that the sachet contained the shabu allegedly confiscated from Cacao.

The only other person who could have identified the subject drug is Pang-ag. However, we cannot lend credence to his supposed identification, the same not being also positive, certain and unequivocal. Besides, there is no showing that this witness actually saw the shabu at the time it was allegedly seized from petitioner. In fact, Pang-ag is even incompetent to make the identification since from all indications, he has never been in possession of it.

Be that as it may, any identification made by these witnesses on the item allegedly seized from petitioner is rendered meaningless and bereft of probative value in view of the categorical denial of the evidence custodian that he received the same from Mangapit. It is now clearly evident from the records that the sachet of shabu which the evidence custodian received, marked and submitted for examination and later presented in court is not the same sachet of shabu which Mangapit claimed to have confiscated from petitioner and subsequently transmitted to the evidence custodian.

Moreover, considering the testimony of Ancheta, it was Balolong who forwarded the seized item. It is quite strange that Ancheta would point to Balolong as the sender of the seized items if he had no basis in saying so. However, our own scrutiny of the records failed to show the role of Balolong in the operation since admittedly, the only lawmen who participated therein were Mangapit and Pang-ag. In fact, as testified to by Mangapit, Balolong proceeded to the hotel after the operation.[30] How then was Balolong able to get hold of the confiscated substance when he was neither a party to nor present during the operation? Who entrusted the substance to him assuming that somebody requested him to submit it for safekeeping? These are only some of the lingering questions which must be answered convincingly and satisfactorily so as to ensure that there had been no substitution, contamination or tampering with the sachet of shabu allegedly taken from petitioner. It must be noted that Balolong was never presented to testify in this case. Thus, there is no evidence to prove that what was turned over to the evidence custodian by Balolong and later presented in court was the same substance recovered from petitioner. The failure to establish the chain of custody is fatal to the prosecution's case. There can be no crime of illegal possession of a prohibited drug when nagging doubts persist on whether the item confiscated was the same specimen examined and established to be the prohibited drug.[31] In *People v. Casimiro*, [32] citing *People v. Mapa*, [33] we acquitted the accused for failure of the prosecution to establish the identity of the prohibited drug which constitutes the corpus delicti. Equally true in *Zarraga v. People*, [34] we also acquitted the accused in view of the prosecution's failure to indubitably show the identity of the shabu.

At this juncture, it must be stressed that the "corpus delicti in dangerous drugs cases constitutes the drug itself. This means that proof beyond reasonable doubt of the identity of the prohibited drug is essential".[35]

Likewise, our ruling in *People v. Gutierrez* [36] on chain of custody rule is instructive. Thus:

As a mode of authenticating evidence, the chain of custody rule requires the presentation of the seized prohibited drugs as an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. This would ideally cover the testimony about every link in the chain, from seizure of the prohibited drug up to the time it is offered in evidence, in such a way that everyone who touched the exhibit would describe how and from whom it was received, to include, as much as possible, a description of the condition in which it was delivered to the next in the chain.

Finally, petitioner's defenses of denial and frame-up are concededly inherently weak and commonly used in drug-related cases. However, it must be stressed that conviction of the accused must rest not on the weakness of the defense but on the strength of the evidence of the prosecution.

Based on the foregoing, we are of the considered view that the quantum of evidence needed to convict, that is proof beyond reasonable doubt, has not been adequately established by the prosecution. While as a rule we desist from disturbing the findings and conclusions of the trial court especially with respect to the credibility of witnesses, we must bow to the superior and immutable rule that the guilt of the accused must be proved beyond reasonable doubt because the law presumes that the accused is innocent unless and until proven otherwise. Presumption of regularity in the performance of official duty cannot by itself override the constitutional right of the accused to be presumed innocent unless overcome by strong, clear and compelling evidence.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. CR No. 29985 dated July 27, 2007 affirming in toto the Decision of the Regional Trial Court of Laoag City, Branch 13, in Criminal Case No. 11489-13, and its Resolution dated December 11, 2007 denying the motion for reconsideration, are REVERSED and SET ASIDE. Petitioner Julius Cacao y Prieto is ACQUITTED on ground of reasonable doubt.

SO ORDERED.

Carpio, (Chairperson), Brion, Abad, and Perez, JJ., concur.

[1] See Republic Act No. 9165 (2002), Sec. 2.

[2] Constitution, Art. III, Sec. 14(a).

[3] Rollo, pp. 63-92; penned by Associate Justice Vicente S. E. Veloso and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

[4] Records, Criminal Case No. 11489-13, pp. 97-108; penned by Judge Philip G. Salvador.

[5] Rollo, p. 95.

[6] Docketed as Criminal Case No. 11487-13.

[7] Docketed as Criminal Case No. 11489-13.

[8] Records, Criminal Case No. 11489-13, p. 1.

[9] Id. at 31.

[10] Rollo, pp. 134-136.

[11] Id. at 21-23.

[12] Records, Criminal Case No. 11487-13, pp. 7-8.

[13] CA rollo, p. 164.

[14] Id. at 207.

[15] Rollo, p. 28.

[16] Id. at 34.

[17] Id. at 45.

[18] Id. at 51.

[19] Id. at 52.

[20] Id.

[21] American Home Assurance Company v. Chua, 368 Phil. 555, 565 (1999).

[22] People v. Obmiranis, G.R. No. 181492, December 16, 2008, 574 SCRA 140, 148; Malinlin v. People, G.R. No. 172950, April 27, 2007, 553 SCRA 619, 632.

[23] Cariño v. People, G.R. No. 178757, March 13, 2009; People v. Simbahon, 449 Phil. 74, 83 (2003).

[24] TSN, February 1, 2005, pp. 7-8.

[25] TSN, February 24, 2005, p. 7.

[26] TSN, February 7, 2005, p. 6.

[27] Id. at 10.

[28] TSN, February 24, 2005, p. 12.

[29] TSN, February 24, 2005, p. 8.

[30] TSN, February 24, 2005, p. 10.

[31] Valdez v. People. G.R. No. 170180, November 23, 2007, 538 SCRA 611, 628-629.

[32] 432 Phil. 966, 977 (2002).

[33] G.R. No. 91014, March 31, 1993, 220 SCRA 670.

[34] G.R. No. 162064, March 14, 2006, 484 SCRA 639, 652.

[35] People v. Quebral, G.R. No. 185379, November 27, 2009.

[36] G.R. No. 177777, December 4, 2009.

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