

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. CESAR CANTALEJO Y MANLANGIT, APPELLANT.

G.R. No. 182790. April 24, 2009

Ponente: TINGA, J.

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TINGA, J.:

An Information[1] for violation of Section 5 of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, was filed against appellant Cesar Cantalejo y Manlangit. At the arraignment, appellant pleaded not guilty to offense charged. Thereafter, trial on the merits ensued.

The prosecution presented as witnesses PO2 Paul Acosta and PO1 Romualdo Cruda. On the other hand, the defense presented appellant, his wife Virginia Cantalejo and Nomeriano Belen, Jr. as witnesses.

Culled from the records, the prosecution established that:

On 20 January 2004, past midnight, two male police assets went to the office of the DPIU, Camp Karingal, Sikatuna Village, Quezon City to report on the illegal drug activities of a certain "Cesar" at Esteve Street, Manggahan, Commonwealth Avenue, Quezon City.

Based on the report, a police entrapment team was organized. During the briefing of the team, SPO4 Celso Jeresano was designated as team leader while PO2 Paul Acosta was assigned as the poseur-buyer. PO2 Acosta was given one (1) P500.00 bill as buy-bust money on which he placed his initials. The other members of the team were Antonio Disuanco, Genaro Martinez, Timoteo Evasco, Elmer Monsalve, Ramon Mateo and Romualdo Cruda.

At about 1:00 a.m., the team, together with the police assets, proceeded to the scene of the crime on board a marked vehicle. Near the place, PO2 Acosta and one of the assets alighted from the vehicle and took a tricycle to the destination while the marked vehicle followed behind.

Thereat, PO2 Acosta and the asset walked towards Cesar's house and saw him standing in front of his house. The asset greeted Cesar and introduced PO2 Acosta to him as his kumpare. Cesar then remarked, "napasyal kayo." PO2 Acosta told Cesar, "kukuha sana kami ng panggamit." Cesar asked how much and PO2 Acosta replied "P500.00 worth." Cesar said "sandali lang." Cesar got the P500 from PO2 Acosta who said to him "Baka magtagal ka." "Sandali lang," Cesar responded and then walked to the side of the house.

When Cesar returned, he handed a plastic sachet to PO2 Acosta who examined it. Certain that the sachet had shabu in it, PO2 Acosta scratched his head as the pre-arranged signal. His companions then rushed to the trio and arrested Cesar.

PO1 Cruda searched Cesar and recovered the marked P500.00 bill which he marked with his own initials. Cesar was arrested and brought to Camp Karingal. PO2 Acosta brought the sachet to the camp, marked it with his own initials and turned it over to the desk officer. The sachet was subsequently brought to Camp Crame for analysis

and found positive for shabu.[2]

The defense, however, contended that between 1:00 and 2:00 in the early morning of 20 January 2004, appellant and his wife had been sleeping inside their house, with their five (5) children, when they were woken by a soft knocking on the door. Appellant stood up to ask who was knocking but none answered. After a while, a loud banging was again heard on the door. Appellant had stood up another time to answer the door and several armed male persons entered shouting "Dapa! Dapa!." Appellant obeyed the order and was told "Kailangan namin ng shabu." Appellant replied "wala pong shabu dito." Even so, the men searched the house, poked a gun at appellant's spouse and the children and asked them to stay in a corner. One of the men asked appellant's spouse if his husband is Cesar Cantalejo. After replying in the affirmative, she asked what they needed from them. The man declared that there was no shabu in their house. Appellant's spouse warned them that they would not find any shabu as they were members of the Iglesia ni Kristo. After the armed men's search of the house for about an hour and frisking on their bodies proved futile, nevertheless, appellant was brought to Camp Karingal.

Nomeriano Belen, Jr. testified in corroboration that he had heard loud sounds coming from Cesar's house and turning his sight towards that direction, he had seen about ten (10) armed men thereat.[3]

In a Decision dated 28 April 2006, the Regional Trial Court (RTC) of Quezon City, Branch 103 found appellant guilty of the offense charged. The dispositive portion of the decision reads, as follows:

ACCORDINGLY, judgment is hereby rendered finding the accused, CESAR CANTALEJO y MANLANGIT, GUILTY beyond reasonable doubt of the offense of Violation of Section 5, R.A. 9165 (drug pushing) as charged and he (sic) sentenced to LIFE IMPRISONMENT and ordered to pay a fine of P500,000.00.

The plastic sachet of shabu involved in this case is ordered transmitted to the PDEA thru the DDB for proper disposition per R.A. 9165.

SO ORDERED.[4]

Before the Court of Appeals, appellant maintained that the trial court erred in convicting him as the constitutional presumption of innocence in his favor had not been overthrown; and that it disregarded his constitutional right against unreasonable searches and seizures.

On 21 November 2007, the Court of Appeals rendered the assailed decision[5] affirming the judgment of the trial court.

Appellant's contentions are now before us. Appellant manifested that he is adopting his appellant's brief before the Court of Appeals as his supplemental brief.[6] The OSG likewise manifested that it is no longer filing a supplemental brief.[7]

The appeal is meritorious.

The rule is that the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, but it does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[8] In the case at bar, there are circumstances which, if properly appreciated, would warrant a conclusion different from that arrived at by the trial court and the Court of Appeals.

The Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies on the prosecution to overcome such presumption of innocence by presenting the quantum of evidence required. In so doing, the prosecution must rest on its own merits and must not rely on the weakness of the defense. And if the prosecution fails to meet the required amount of evidence, the defense may logically not even present evidence on its own behalf. In which case the presumption prevails and the

accused should necessarily be acquitted.[9]

In prosecutions 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.[10] The dangerous drug is the very corpus delicti of the offense.[11]

In the case at bar, the testimonies for the prosecution and for the defense are diametrically opposed to each other. The prosecution's version of events consisted of the two police officers' testimonies regarding the buy-bust operation whereas appellant and his wife denied that there had been a sale at all and cried frame-up. An examination of the decisions of the trial court and the Court of Appeals revealed a heavy reliance on the testimonies of the police officers and a blind dependence on the presumption of regularity in the conduct of police duty. In light of the defense's theory of frame-up and an unconstitutional search and seizure, it is imperative that the prosecution present more evidence to support the police officers' allegations. The prosecution could have presented the other police officers who were members of the back-up team and should have offered rebuttal evidence to refute the 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.

Appellant and his wife testified that the police officers had entered and searched their house without a warrant and on a hunt for shabu. Significantly, appellant's wife also testified that the police officers, belying their assertions, did not even know who Cesar was and whether he owned the house they had entered, to wit:

ATTY. CONCEPCION to VIRGINIA CANTALEJO:

Q- When these police officers poked a gun at you, what happened?

A- After the police poked a gun at me and our children one policeman said "misis wag kayong aalis diyan."

Q-

After the conversation, what happened next?

A- The man asked me if that is my husband.

Q- After that?

A- One police officer asked me is it Cesar Cantalejo.

Q-

What is your answer?

A- Yes, ano ho ba ang kailangan ninyo sa amin.

Q-

And what was his answer?

A- The police said may shabu daw sa bahay namin.

Q-

After that?

A- They searched the entire house.[12]

While it may be contended that Virginia Cantalejo's testimony is a biased one, it remains the prosecution's task to refute her story such that their version of events is proven to have actually transpired with moral certainty. 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.[13] It is worthy of note again that the prosecution did not present rebuttal evidence.[14]

In addition, the Court finds that the identity of the corpus delicti has not been sufficiently established. PO2 Acosta testified as follows:

FIS. ARAULA:

At the police station, what happened there?

WITNESS:

We turned over to the Desk Officer the plastic sachet and the buy bust money, sir.

FIS. ARAULA:

Do you know what the Desk Officer did to that transparent plastic sachet?

WITNESS:

Our investigator was there sir, to make the request to the Crime Laboratory, sir.

FIS. ARAULA:

Who was the person who brought the transparent plastic sachet to the Crime Laboratory?

WITNESS:

I am not sure but "parang ako," sir.[15]

PO1 Romualdo Cruda likewise testified as follows:

FISCAL ARAULA

Q:

Were you able to see that shabu that Acosta bought from the accused?

WITNESS

A:

I first saw it when it was turned over to the desk officer.[16]

x x x

ATTY. CONCEPCION:

You also said a while ago you responded to go nearer to the poseur buyer and to this Cantalejo when there is already a "kaguluhan"?

WITNESS:

Yes, ma'am.

ATTY. CONCEPCION:

You did not see to whom this Cantalejo give the plastic sachet?

WITNESS:

I did not see.

ATTY. CONCEPCION:

You do not know what happened to the actual deal?

WITNESS:

I did not.[17]

Their testimonies do not definitively state and nothing on record shows that the procedural requirements of Section 21,[18] Paragraph 1 of Article II of R.A. No. 9165 with respect to custody and disposition of confiscated drugs were complied with. There was no physical inventory and photograph of the items allegedly confiscated from appellant. Neither did the police officers offer any explanation for their failure to observe the rule.

In *People v. Orteza*,[19] the Court citing *People v. Laxa*,[20] *People v. Kimura*[21] and *Zarraga v. People*,[22] reiterated the ruling that the failure of the police to comply with the procedure in the custody of the seized drugs raises doubt as to its origins.[23]

As stated by the Court in *People v. Santos, Jr.*,[24] failure to observe the proper procedure also negates the operation of the presumption of regularity accorded to police officers.[25] As a general rule, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption

that they have performed their duties regularly.[26] However, when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.

While the law enforcers enjoy the presumption of regularity in the performance of their duties, this presumption cannot prevail over the constitutional right of the accused to be presumed innocent and it cannot by itself constitute proof of guilt beyond reasonable doubt.[27] The presumption of regularity is merely just that—a mere presumption disputable by contrary proof and which when challenged by evidence cannot be regarded as binding truth.[28]

All told, the totality of evidence presented in the instant case does not support appellant's conviction for violation of Section 5, Article II, R.A. No. 9165, since the prosecution failed to prove beyond reasonable doubt all the elements of the offense. Following the constitutional mandate, when the guilt of the appellant has not been proven with moral certainty, as in this case, the presumption of innocence prevails and his exoneration should be granted as a matter of right.

WHEREFORE, the assailed Decision dated 21 November 2007 of the Court of Appeals in CA-G.R. CR HC No. 02180 which affirmed the judgment of conviction of the Regional Trial Court of Quezon City, Branch 103 is REVERSED and SET ASIDE. Appellant CESAR CANTALEJO Y MANLANGIT is ACQUITTED on reasonable doubt and is accordingly ordered immediately released from custody unless he is being lawfully held for another offense.

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 thereof, of the date appellant was actually released from confinement.

Let a copy of this decision be forwarded to the PNP Director and the Director General of the Philippine Drug Enforcement Agency for proper guidance and implementation. No costs.

SO ORDERED.

Carpio-Morales,[*] (Acting Chairperson), Velasco, Jr., Leonardo-De Castro,**] and Brion, JJ., concur.

* Acting Chairperson as replacement of Justice Leonardo A. Quisumbing who is on official leave per Special Order No. 618.

** Additional member of the Second Division per Special Order No. 619.

[1] Rollo, p. 3.

The accusatory portion of the Information in Criminal Case No. Q-04-124009 reads:

That on or about the 20[th] day of January, 2004 in Quezon City, Philippines, the said accused not being authorized by to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero eight (0.08) gram of methylamphetamine hydrochloride, a dangerous drug. (Emphasis supplied)

CONTRARY TO LAW.

[2]TSN, 3 August 2004, pp. 3-13; TSN, 31 January 2005, pp. 6-26.

[3] Rollo, pp. 5-7; TSN, 11 May 2005, pp. 3- 17; TSN, dated 25 August 2005, pp. 5-20; TSN, 26 October 2005, pp. 3-12.

[4] CA rollo, p. 46

[5] Rollo, pp. 2-14. In C.A.-G.R. CR-H.C. No. 02180. Penned by Associate Justice Myrna Dimaranan vidal and concurred in by Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr.

[6] Id. at 29.

[7] Id. at 34.

[8] People v. Pedronan, G.R. No. 148668, 17 June 2003, 404 SCRA 183, 188; People v. Casimiro, G.R. No. 146227, 20 June 2002, 383 SCRA 390, 398; People v. Laxa, G.R. No. 138501, 20 July 2001, 361 SCRA 622, 627.

[9] People v. De la Cruz, G.R. No. 177222, 29 October 2008.

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

[11] People v. Simbahon, 449 Phil. 74, 81 (2003).

[12] TSN, 25 August 2005, pp. 13-14.

[13] People v. Santos, Jr., G.R. No. 175593, 17 October 2007, 536 SCRA 489.

[14] Records, p. 85.

[15] TSN, 3 August 2004, p. 11.

[16] TSN, 31 January 2005, p. 16.

[17] Id. at 26-27.

[18] Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.—The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

[19] G.R. No. 173051, 31 July 2007, 528 SCRA 750.

[20] 414 Phil. 156 (2001).

[21] G.R. No. 130805, 27 April 2004, 428 SCRA 51.

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

[23] Supra note 19 at 758.

[24] G.R. No. 175593, 17 October 2007, 536 SCRA 489.

[25] Id. at 505.

[26] People v. De Guzman, G.R. No. 151205, 9 June 2004, 431 SCRA 516, 522.

[27] People v. Cañete, 433 Phil. 781, 794 (2002).

[28]Mallilin v. People, G.R. No. 172953, 30 April 2008, 553 SCRA 619.

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