

FIRST DIVISION

[G.R. No. 174980, August 31, 2011]

RADITO AURELIO Y REYES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

DEL CASTILLO, J.:

In resolving this petition for review on *certiorari*, we rely on two legal precepts. First, inconsistencies in the testimonies of prosecution witnesses that do not relate to the elements of the offense are too inconsequential to warrant a reversal of the trial court's judgment of conviction. Second, the defenses of denial and frame-up must be substantiated with clear and convincing evidence; otherwise, same cannot prevail over the positive and credible testimonies of the prosecution witnesses.

Factual Antecedents

On October 22, 2002, two Informations charging petitioner Radito Aurelio y Reyes @ Jack (petitioner) with violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165^[1] were filed with the Regional Trial Court (RTC) of Mandaluyong City, and raffled off to Branch 213.

The Information^[2] charging the petitioner with violation of Section 5,^[3] Article II of R.A. No. 9165 was docketed as Criminal Case No. MC-02-6019-D and contained the following accusatory allegations:

That on or about the 17th day of October 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, without any lawful authority, did then and there willfully, unlawfully and feloniously deliver, distribute, transport or sell to poseur buyer, P01 Julius B. Bacero one (1) small heat-sealed transparent plastic sachet containing 0.05 gram of white crystalline substance, which was found positive to the test for Methylamphetamine Hydrochloride, commonly known as "shabu", a dangerous drug, for the amount of P100.00 bearing Serial No. HA802877, without the corresponding license and prescription, in violation of the above-cited law.

CONTRARY TO LAW.

On the other hand, the Information^[4] charging petitioner with violation of Section 11,^[5] Article II of R.A. No. 9165 was docketed as Criminal Case No. MC-02-6020-D and contained the following accusatory allegations:

That on or about the 17th day of October 2002, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court the above-named accused, not having been lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously and knowingly have in his possession, custody and control one (1) small heat-sealed transparent plastic sachet containing 0.12 gram of white crystalline substance, which was found positive to the test for Methylamphetamine Hydrochloride, commonly known as "shabu", a dangerous drug, without the corresponding license and prescription, in violation of the above-cited law.

CONTRARY TO LAW.

Upon motion of the prosecution, the two cases were consolidated. When petitioner was arraigned, he entered a plea of "not guilty" to the charges. Thereafter, pre-trial and trial ensued.

The Version of the Prosecution

On October 17, 2002, Police Chief Inspector Bien B. Calag, Jr. (Chief Inspector Calag) of Task Force Magpalakas of the Philippine National Police instructed SPO2 Julius Bacero (SPO2 Bacero) to verify a report of rampant selling of *shabu* in M. Vasquez Street, Barangay Harapin ang Bukas, Mandaluyong City. At the same time, Chief Inspector Calag also contacted his informant and directed the latter to gather data that would substantiate the report. After 45 minutes, the informant called up and confirmed the reported illegal trade of *shabu*.

SPO2 Bacero, together with PO1 Ronald Jacuba (PO1 Jacuba), then proceeded to the area to conduct police surveillance. The informant directed them to the house where the sale of *shabu* was being conducted. Thereafter, the police officers returned to the station and reported their findings to Chief Inspector Calag, who immediately formed a buy-bust team composed of said police officers and members of the Mayor's Action Command. SPO2 Bacero was designated as the poseur-buyer.

At around 4:30 in the afternoon that day, the buy-bust team proceeded to the house of the petitioner. SPO2 Bacero knocked on the door and petitioner opened it. When SPO2 Bacero said "*Pare iiskor ako ng piso,*" petitioner told him to wait and went back inside the house. Meanwhile, SPO2 Bacero used his mobile phone to give PO1 Jacuba a ring - their pre-arranged signal for PO1 Jacuba to get closer to the house of petitioner. After three minutes, the petitioner asked SPO2 Bacero to enter and gave him a small sachet containing white crystalline substance. In exchange, SPO2 Bacero paid petitioner with marked money.

Thereafter, PO1 Jacuba arrived and, together with SPO2 Bacero, arrested the petitioner. They apprised him of his constitutional rights and frisked him. They recovered the marked money and another plastic sachet containing white crystalline substance from petitioner.

The police officers brought petitioner to the Mandaluyong Medical Center for medical check-up then proceeded to the police station for blotter and interrogation. The two sachets containing white crystalline substance recovered from the petitioner were

sealed and marked as "JB-1" and "JB-2". The case was then turned over to SPO1 Jaime Masilang of the Criminal Investigation Unit of Mandaluyong City for investigation and referral to appropriate offices. He endorsed the two sachets to the crime laboratory for examination. The results of the examination conducted by Police Inspector Armand De Vera (Police Inspector De Vera) on the contents of the sachets tested positive for methamphetamine hydrochloride, also known as *shabu*, a dangerous drug.

The Version of the Petitioner

Petitioner denied the allegations against him and presented a completely different scenario. He testified that in the late afternoon of October 17, 2002, he was watching television in the house of his neighbor which is about 20 meters from his house. He went out to buy cigarettes, but suddenly two men grabbed him and told him to proceed to his house. They went to his house and stayed there for 15 minutes until they were joined by three more persons. After that he was taken to an alley and ordered to board a vehicle that took them to the *barangay* hall. Ten minutes later he was brought to the City Hall of Mandaluyong where a police officer questioned him on an alleged *shabu* incident.

Petitioner was then taken to the office of Task Force Magpalakas, located at the lower level of the Mandaluyong City Hall. Thereat, he saw SPO2 Bacero for the first time, who demanded P30,000.00 for his liberty. Unable to produce the money, he was charged in separate criminal informations with allegedly selling and possessing *shabu*.

Petitioner's long-time neighbor, Julieta Dulia (Julieta) and his sister, Teresita Aurelio (Teresita), corroborated his testimony.

Ruling of the Regional Trial Court

On March 2, 2005, the trial court rendered its Judgment^[6] convicting petitioner for violation of Sections 5 and 11, Article II of R.A. No. 9165. The dispositive portion of the Judgment reads:

WHEREFORE, CONSIDERING ALL THE FOREGOING, accused RADITO AURELIO Y REYES is hereby found GUILTY BEYOND REASONABLE DOUBT of the offenses charged and he is hereby sentence [sic] to suffer the straight penalty of twelve (12) years imprisonment for Violation of Section 5, Article II of Republic Act No. 9165, in Criminal Case No. MC-02-6019-D and he is likewise, sentence [sic] to suffer the straight penalty of twelve (12) years imprisonment for Violation of Section 11, Article II of Republic Act No. 9165, in Criminal Case No. MC-02-6020-D, respectively.

The evidence recovered from the herein accused is hereby forfeited in favor of the government to be disposed of in accordance with existing rules.

The Branch Clerk of Court is hereby ordered to submit the same to that office within fifteen (15) days from today, the corresponding receipt to be

submitted to the undersigned.

SO ORDERED.^[7]

Ruling of the Court of Appeals

The CA affirmed with modification the Judgment of the trial court by increasing the penalty of imprisonment imposed on the petitioner in both cases. The dispositive portion of its June 22, 2006 Decision^[8] reads:

WHEREFORE, the assailed decision of the Regional Trial Court of Mandaluyong City, Branch 213 dated March 2, 2005 is hereby AFFIRMED with the following MODIFICATIONS:

(1) In Criminal Case No. MC-02-0619-D, the penalty is modified to LIFE IMPRISONMENT and a fine of P500,000.00, in accordance with the first paragraph of Section 5, Article II of Republic Act No. 9165.

(2) In Criminal Case No. MC-02-6020-D, the penalty is modified to the indeterminate sentence of TWELVE (12) YEARS AND ONE (1) DAY as minimum to TWENTY (20) YEARS as maximum and a fine of P300,000.00.

SO ORDERED.^[9]

Petitioner filed a Motion for Reconsideration^[10] but it was denied in the Resolution^[11] dated October 9, 2006.

Thus, this petition.

Assignment of Errors

The petitioner ascribes upon the CA the following two-fold errors:

BOTH THE TRIAL AND APPELLATE COURTS GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF POLICE OFFICER JULIUS BACERO AND IN FINDING PETITIONER 'GUILTY' OF THE OFFENSES CHARGED.

BOTH THE TRIAL AND APPELLATE COURTS ERRED IN NOT FINDING THAT NO DRUG BUY-BUST [OPERATION] ACTUALLY TOOK PLACE.^[12]

The petitioner contends that the trial court erred in giving credence to the testimonies of the prosecution witnesses due to several inconsistencies on material points. According to the petitioner, the trial court obviously had no basis in relying on the presumption that the police officers regularly performed their duties in conducting the entrapment operation. In support of his contention, petitioner

quoted at length portions of the stenographic notes.

Our Ruling

The petition is unmeritorious.

Elements for the Prosecution of Illicit Sale and Possession of Shabu

In a prosecution for the illegal sale of dangerous drugs, the following elements must be proven beyond reasonable doubt: (1) the identity of the buyer and the seller, the object, and consideration; and, (2) the delivery of the thing sold and the payment therefor. What is crucial to the prosecution for illegal sale of dangerous drugs is evidence of the transaction, as well as the presentation in court of the *corpus delicti*. On the other hand, in a prosecution for illegal possession of a dangerous drug, there must be proof that "(1) the accused was in possession of an item or an object identified to be a prohibited or regulated drug, (2) such possession is not authorized by law, and (3) the accused was freely and consciously aware of being in possession of the drug."^[13]

In this particular case, the prosecution established beyond reasonable doubt all the essential elements of illegal sale and possession of *shabu*. Petitioner was positively identified by the prosecution witnesses as the person who sold the *shabu* presented in court. SPO2 Bacero testified that he purchased and received the *shabu* from petitioner during a legitimate buy-bust operation and that another sachet containing *shabu* was seized from petitioner's possession after they conducted a lawful search as an incident to a valid warrantless arrest. The marked money used in the buy-bust operation was duly presented, and the *shabu* seized from the petitioner was positively and categorically identified in open court. It was also shown that petitioner sold and possessed the *shabu* without authority, license or prescription.

SPO2 Bacero narrated the details leading to the consummation of the sale of the illegal drug, the arrest he made, and the recovery of the drugs from the possession of the petitioner:

Q. Who in your office actually received the information that somebody is selling "shabu" somewhere in M. Vasquez St.?

A. Police Chief Inspector Bien B. Calag, ma'am.

x x x

x

Q. Aside from informing you that he received an information regarding activities involving selling "shabu" along M. Vasquez St., what if any did chief Inspector Calag [tell] you?

A. He instructed us to verify the report.

x x x

x

Q. And what did you do by way of verifying the information?

A. In compliance with that we directed our secret informant to conduct surveillance to confirm the report.

x x x

x