

## SECOND DIVISION

[ G.R. No. 179344, August 03, 2011 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
EDGARDO FERMIN Y GREGORIO AND JOB MADAYAG, JR., Y  
BALDERAS, ACCUSED-APPELLANTS.**

### D E C I S I O N

**PEREZ, J.:**

For our review is the Decision<sup>[1]</sup> of the Special Fifteenth Division of the Court of Appeals in CA-G.R. CR-HC No. 01852 dated 31 May 2007, convicting the herein accused-appellants Edgardo Fermin y Gregorio and Job Madayag, Jr. y Balderas guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165. The dispositive portion of the assailed decision reads:

**WHEREFORE**, the Decision of the Regional Trial Court of Quezon City, Branch 103 in Criminal Case No. Q-03-119028, finding accused-appellants Edgardo Fermin y Gregorio and Job Madayag, Jr. y Balderas guilty beyond reasonable doubt of violation of Article 5 [Section 5], Article II of R.A. 9165, and sentencing them to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (Php 500, 000)** each is **AFFIRMED in toto**.

The facts as presented by the prosecution follow:

At around 9 a.m. of 9 July 2003, a police informant went to La Loma Police Station in Quezon City and reported that two (2) male persons are engaged in illegal sale of drugs at No. 93 Iba St., Brgy. San Isidro, Quezon City. The two were eventually identified as the herein accused Job B. Madayag, Jr. (Madayag, Jr.) *alias* "Rolan" and Edgardo G. Fermin (Fermin) *alias* "Jon-Jon." Acting upon the report, Station Chief Police Senior Inspector Oliver M. Villanueva (Senior Inspector Villanueva) created a team to conduct a buy-bust operation. The team was composed of the police members of the station namely, PO1 Roderick Valencia (PO1 Valencia), PO1 Albert Mabutol (PO1 Mabutol), PO2 Ronald Pascua (PO2 Pascua), PO2 Edsel Ibasco (PO2 Ibasco) and one identified only as PO De Guzman. In their briefing, Senior Inspector Villanueva gave each member of the team their respective assignments; PO2 Ibasco will act as the *poseur*-buyer with the rest of the team completing the cast. Senior Inspector Villanueva gave PO2 Ibasco one (1) One Hundred Peso Bill for use as marked money. PO2 Ibasco, in turn, put his initial "EI" on the bill.<sup>[2]</sup>

At around 11 a.m. of the same day, the buy-bust team, together with Senior Inspector Villanueva and the confidential informant, went to the target area of

operation at No. 93 Iba St., *Brgy.* San Isidro in Quezon City on board a *Tamaraw* FX. PO2 Ibasco and the confidential informant proceeded to the area where they saw the subject, Madayag, Jr., in front of the house. The rest of the team positioned themselves, more or less ten to fifteen meters away from the location of PO2 Ibasco, the informant and Madayag, Jr. The informant then introduced PO2 Ibasco to Madayag, Jr. as a drug-dependent who wanted to buy drugs. When Madayag, Jr. asked for payment, PO2 Ibasco paid in the one-hundred-peso marked money. Madayag, Jr. then called another person from inside the house. The man, later identified as the co-accused Fermin, came out and gave three (3) plastic sachets to Madayag, Jr. Madayag, Jr. turned again to PO2 Ibasco and showed him the three (3) plastic sachets at his palm and told the *poseur-buyer*, "*Dahil kasama ka na namin, mamili ka dito sa tatlo para makasigurado kang di ka talo, sisiguraduhin kong babalik ka.*"<sup>[3]</sup> PO2 Ibasco then took one plastic sachet from Madayag Jr.'s palm and examined its content. Being convinced that the content was positive for *shabu*, PO2 Ibasco made the pre-arranged signal of scratching his head in order to alert the other members of the buy-bust team. The members then immediately rushed to the location and introduced themselves as police officers.

PO2 Ibasco testified in his Direct Examination<sup>[4]</sup> that PO2 Pascua got hold of Fermin while PO1 Valencia got hold of Madayag, Jr. He added that PO2 Pascua was able to recover the buy-bust money and plastic sachet from Fermin while PO1 Valencia recovered a *bente nueve* knife from Madayag, Jr. PO2 Ibasco added that the plastic sachet which was the subject of illegal sale remained in his possession which he marked "EI-JM," while the rest were in the custody of PO2 Pascua. The buy-bust team returned to the police station with the two (2) accused and all the [pieces of] of evidence were turned over to the desk officer, and the desk officer turned them over to the police investigator.<sup>[5]</sup>

PO2 Pascua affirmed in open court that he arrested and bodily frisked Fermin and was able to recover one plastic sachet and one (1) .38 *Paltik* Revolver.<sup>[6]</sup> However, he contradicted the previous statement of PO2 Ibasco that PO1 Valencia was the one who got hold of Madayag, Jr. He testified that it was PO2 Ibasco who arrested Madayag, Jr. and recovered from the latter the buy-bust money.<sup>[7]</sup> He contradicted himself when, on the earlier part of his testimony he said that all the pieces of evidence including the plastic sachet which was the subject of sale were in his possession until they were turned over to the investigator,<sup>[8]</sup> he later testified that PO2 Ibasco recovered one plastic sachet from Madayag, Jr.<sup>[9]</sup>

Nonetheless, the two police officers were one in testifying that a Joint Affidavit about the conducted operation was executed by them at the police station.<sup>[10]</sup>

PO2 Ibasco identified the one (1) hundred peso bill with serial number ZT-427430 bearing his initial "EI" as the marked money used in the buy-bust operation.<sup>[11]</sup> PO2 Pascua, on the other hand, admitted that he put his initial "RP-EF" in all the plastic sachets he recovered<sup>[12]</sup> and in the .38 *paltik* revolver.<sup>[13]</sup>

The confiscated sachets of *shabu* were turned over to the Police Crime Laboratory at Central Police District in Quezon City for examination.<sup>[14]</sup> Police Forensic Chemist Officer Bernardino Banac, Jr. executed Chemistry Report No. D-605-03 finding the submitted specimen positive for *methyldamphetamine hydrochloride*, a dangerous

drug.[15]

The factual version presented by the defense is:

Madayag, Jr. testified that before 12 noon of 9 July 2003, while he was buying some cigarettes from a nearby store, he noticed that around eight (8) armed male persons wearing civilian clothes, who turned out to be police officers, were in front of his house located at No. 93 Iba St., *Brgy.* San Isidro, Quezon City. He approached them to ask what they were looking for. However, instead of answering, two of the police officers, one identified as PO1 Valencia, drew their firearms and poked them at Madayag, Jr.'s head.[16] One of them then pulled the accused inside the house. He was then made to lie down on the cement floor of the veranda. The police officers entered the house and when they came out after around ten minutes, the other accused Fermin, who was then sleeping inside one of the bedrooms of the same house, and his mother were brought to the veranda.[17] Fermin was also forced to lie down by the police officers.[18] PO1 Valencia recovered a cigarette lighter from Madayag, Jr., which the police described as, "*eto ang gamit mo sa shabu.*"[19] The police then took the two accused and Fermin's mother to the police station where they were detained.[20]

Fermin, the other accused, said his mother was later released because she paid the police officers the amount of P11,000.00.[21] He added that they remained in detention because they could not produce the additional demanded amount of P14,000.00.[22]

Fermin corroborated the testimony of Madayag, Jr. in court. He said that at around 11:00 a.m. of 9 July 2003, while he was sleeping, together with his nieces, at one of the rooms of the house at No. 93 Iba St., *Brgy.* San Isidro, Quezon City, police officers entered the room and grabbed him on his nape and arrested his mother.[23] Then they were brought to the veranda of the house where he saw Madayag, Jr. lying facedown on the floor.[24] He was ordered to lie down by Valencia. He denied that a gun was taken from him or that he was called by Madayag, Jr.[25] He further denied having given three (3) plastic sachets to Madayag, Jr. or that he was frisked by the police for plastic sachets and money.[26]

Eventually, an Information was filed against Fermin *alias* "Jon-Jon" and Madayag, Jr. *alias* "Rolan" dated 14 July 2003 which reads:

That on or about 9<sup>th</sup> day of July 2003, in Quezon city, Philippines, the said accused, conspiring together, confederating with and mutually helping one another, not being authorized by law to sell, deliver, transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as a broker in the said transaction, zero point eleven (0.11) gram of white crystalline substance containing *Methylamphetamine* Hydrochloride, a dangerous drug.[27]

Upon arraignment, both the accused entered a plea of not guilty.

On 19 December 2005, the trial court found both the accused guilty of the crime charged. The dispositive portion reads:

WHEREFORE, in view of the foregoing, the court hereby finds accused Job Madayag, Jr. y Balderas and accused Edgardo Fermin y Gregorio GUILTY as conspirator of the crime of drug pushing and each is hereby sentenced to suffer Life Imprisonment and to pay a fine of P500,000 each.

Upon appeal before the Court of Appeals, the accused in its Appellee's Brief assigned the following errors:<sup>[28]</sup>

1. THE TRIAL COURT COMMITTED SERIOUS AND REVERSIBLE ERROR IN FINDING THAT A BUY-BUST OPERATION WAS CONDUCTED AGAINST APPELLANT AT ABOUT 11:30 O'CLOCK IN THE MORNING OF JULY 9, 2003 IN FRONT OF HOUSE NO. 93 IBA ST., BRGY. SAN ISIDRO LABRADOR, QUEZON CITY.

2. THE TRIAL COURT COMMITTED SERIOUS AND REVERSIBLE ERROR IN FINDING APPELLANTS GUILTY AS CONSPIRATORS OF THE CRIME OF DRUG PUSHING AND SENTENCING EACH TO SUFFER LIFE IMPRISONMENT AND TO PAY A FINE OF P500,000.00 EACH.

3. THE TRIAL COURT COMMITTED SERIOUS AND REVERSIBLE ERROR IN FAILING TO ACQUIT APPELLANTS OF THE CHARGE ALLEGED IN THE INFORMATION.

In its Decision, the Court of Appeals agreed with the judgment of the trial court that the two accused were guilty beyond reasonable doubt of the offense charged against him.<sup>[29]</sup>

The appellate court found that the testimonies of PO2 Ibasco and PO2 Pascua were straightforward and candid as against the claim of *alibi* or frame-up and extortion of the two accused. Further, the appellate court found no motive on the part of the police officers to frame up both of the accused. Finally, it ruled against the alleged lack of "verisimilitude" of the prosecution's version because the improbabilities, inconsistencies contradictions and self-contradictions did not pertain to the actual buy-bust itself but only to peripheral matters.

### ***The Court's Ruling***

The defense's main argument is whether or not there was really a buy-bust operation on 9 July 2003. While we are not in total agreement with all the submissions of the defense, this Court is reversing the ruling of the lower courts and now acquits the two accused of the crime charged.

In a prosecution for illegal sale of dangerous drugs, the following elements must be proven: (1) that the transaction or sale took place; (2) that the *corpus delicti* or the illicit drug was presented as evidence; and (3) that the buyer and seller were

identified.<sup>[30]</sup> The presence of these elements is sufficient to support the trial court's finding of appellants' guilt.<sup>[31]</sup> What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. The delivery of the contraband to the *poseur*-buyer and the receipt of the marked money consummate the buy-bust transaction between the entrapping officers and the accused.<sup>[32]</sup> The presentation in court of the *corpus delicti* -- the body or substance of the crime - establishes the fact that a crime has actually been committed.<sup>[33]</sup>

We have repeatedly held that the trial court's evaluation of the credibility of witnesses and their testimonies is entitled to great respect and will not be disturbed on appeal. However, this is not a hard and fast rule. We have reviewed such factual findings when there is a showing that the trial judge overlooked, misunderstood, or misapplied some fact or circumstance of weight and substance that would have affected the case.<sup>[34]</sup>

Cognate to this, while the entrenched rule is that the assessment of witnesses and their testimonies is a matter best undertaken by the trial court which had the opportunity to observe the demeanor, conduct or attitude of the witnesses, the findings of the lower court on this point will be reversed on appeal, if it overlooked substantial facts and circumstances which, if considered, would materially affect the result of the case.<sup>[35]</sup>

This Court believes that on application of the rule to the testimonies of the prosecution witnesses, the exception to the high value of the trial court's findings surfaces. We find irreconcilable conflicts in the recollections about the principal *factum probandum* which is the buy-bust itself. The varying versions about the pre-operation, the illegal sale itself and the immediately preceding actions put doubts about what really transpired on 9 July 2003.

PO2 Ibasco, in his testimony of 15 June 2004, stated that after the transaction, PO2 Pascua arrested Fermin and recovered the buy-bust money and the two plastic sachets; while PO1 Valencia was the one who arrested Madayag, Jr. and recovered from him a *bente nueve* knife.

Fiscal After giving the pre-arranged signal, what happened?

Araula:

Ibasco: My companions rushed towards us and approached us sir.

Q: Now you said your companions approached the both accused at that time?

A: Yes sir.

Q: Who approached Fermin?

A: It was Ronald Pascua sir.

Q: How about Job Madayag?

A: It was Valencia sir.

Q: After your companion Pascua and Valencia arrested them, what happened next?

A: After the arrest, Pascua was able to get the buy-bust money and the plastic sachet sir.

Q: From whom?

A: Fermin sir.