

SECOND DIVISION

[G.R. No. 177148, June 30, 2009]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RAUL NUÑEZ Y
REVILLEZA, APPELLANT.**

D E C I S I O N

QUISUMBING, J.:

This petition for certiorari seeks the reversal of the Decision^[1] dated January 19, 2007 of the Court of Appeals in CA G.R. CR. H.C. No. 02420. The appellate court affirmed the Decision^[2] dated February 11, 2002 of the Regional Trial Court (RTC) of Calamba, Laguna, Branch 36, which convicted appellant in Criminal Case No. 8614-01-C for violation of Section 16, Article III of Republic Act No. 6425, also known as the Dangerous Drugs Act of 1972, as amended by Rep. Act No. 7659.^[3]

On June 25, 2001, Raul R. Nuñez was formally charged with violation of Section 16, Article III of Rep. Act No. 6425, as amended. The Information reads:

That at around 6:00 o'clock in the morning of the 24th day of April 2001^[4] at Brgy. San Antonio, Municipality of Los Ba[ñ]os, Province of Laguna and within the jurisdiction of the Honorable Court, the above-named accused, without any authority of law, and in a search conducted at his residence as stated above, did then and there willfully, unlawfully and feloniously have in his possession, control and custody thirty[-]one (31) heat sealed transparent plastic sachets containing methamp[h]etamine hydrochloride otherwise known as "shabu", a regulated drug, with a total weight of **233.93 grams** in violation of the aforementioned provision of law.

CONTRARY TO LAW.^[5]

The facts are as follows:

At 6:00 a.m. on April 26, 2001, operatives of the Sta. Cruz, Laguna Police Detectives in coordination with the Los Baños Police Station (LBPS) and IID Mobile Force conducted a search in the house of Raul R. Nuñez based on reports of drug possession. The group, led by Commanding Officer Arwin Pagkalinawan, included SPO1 Odelon Ilagan, SPO3 Eduardo Paz, PO1 Ronnie Orfano, PO2 Gerry Crisostomo, PO2 Alexander Camantigue, PO2 Joseph Ortega and Senior Inspector Uriquia.

Before proceeding to appellant's residence in Barangay San Antonio, the group summoned Barangay Captain Mario Mundin and Chief *Tanod* Alfredo Joaquin to assist them in serving the search warrant. Upon arriving at appellant's house, Mundin called on appellant to come out. Thereafter, Commanding Officer Pagkalinawan showed Nuñez the warrant. SPO1 Ilagan and PO2 Crisostomo then

surveyed appellant's room in his presence while his family, PO2 Ortega and the two barangay officials remained in the living room. SPO1 Ilagan found thirty-one (31) packets of *shabu*, lighters, improvised burners, tooters, and aluminum foil with *shabu* residue and a lady's wallet containing P4,610 inside appellant's dresser. The group also confiscated a component, camera, electric planer, grinder, drill, jigsaw, electric tester, and assorted carpentry tools on suspicion that they were acquired in exchange for *shabu*. Following the search, SPO1 Ilagan issued a Receipt for Property Seized^[6] and a Certification of Orderly Search^[7] which appellant signed.

In a Decision dated February 11, 2002, the RTC convicted appellant and sentenced him as follows:

WHEREFORE, this court finds the accused guilty, beyond reasonable doubt for Violation of Republic Act 6425 as amended and is hereby sentenced to suffer the penalty of reclusion perpetua and all its accessory penalties under the law. Accused is ordered to pay the fine of two million pesos.

SO ORDERED.^[8]

Appellant elevated the case to this Court on appeal, but the case was transferred to the Court of Appeals on May 2, 2006, pursuant to our ruling in *People v. Mateo*.^[9] On January 19, 2007, the Court of Appeals rendered its decision affirming appellant's conviction. The appellate court dismissed appellant's defense of frame-up and upheld the credibility of SPO1 Ilagan and PO2 Ortega. It observed that the inconsistencies in their testimony were minor at best, and did not relate to the elements of the crime.

The appellate court in its decision decreed as follows:

WHEREFORE, premises considered, the assailed Decision dated February 11, 2002 of the Regional Trial Court, Branch 36, Calamba, Laguna is hereby **AFFIRMED**.

SO ORDERED.^[10]

From the appellate court's decision, appellant timely filed a notice of appeal. This Court required the parties to submit supplemental briefs if they so desire. However, both the Office of the Solicitor General (OSG) and the appellant manifested that they are adopting their briefs before the appellate court.

In his brief, appellant contends that

I.

THE TRIAL COURT ERRED IN ACCORDING GREATER WEIGHT TO THE EVIDENCE ADDUCED BY THE PROSECUTION AND DISREGARDING THE DEFENSE OF FRAME-UP INTERPOSED BY [THE] ACCUSED-APPELLANT.

II.

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY

BEYOND REASONABLE DOUBT OF THE IMPUTED CRIME DESPITE THE
INHERENT WEAKNESS OF THE PROSECUTION'S EVIDENCE.^[11]

Simply, the issue is whether appellant is guilty beyond reasonable doubt of Possession of Regulated Drugs under the Dangerous Drugs Act of 1972.

Appellant insists that the *shabu* found in his room was planted. He points out variances in the testimonies of the prosecution witnesses which cast doubt on his culpability: first, SPO1 Ilagan testified that they picked up the barangay officials before going to appellant's house but PO2 Ortega claimed that Chief *Tanod* Joaquin was already with them when they left the police station; second, while SPO1 Ilagan confirmed the presence of the accused during the search, PO2 Ortega related otherwise. More importantly, appellant assails the validity of the search warrant as it did not indicate his exact address but only the barangay and street of his residence. He maintains that none of the occupants witnessed the search as they were all kept in the living room. Finally, appellant questions why the prosecution did not call the barangay officials as witnesses to shed light on the details of the search.

Conversely, the OSG argues that appellant's guilt has been proven beyond reasonable doubt. It agrees with the trial court that appellant failed to overcome the presumption that the law enforcement agents regularly performed their duties. Further, the OSG brands the testimonies of appellant, his wife and their child as self-serving, absent ill-motives ascribed to the search team. It brushes aside appellant's protest, on the validity of the search warrant, for having been belatedly made.

After considering carefully the contentions of the parties and the records of this case, we are in agreement that appellant's petition lacks merit.

Appellant was indicted for possession of regulated drugs under Section 16 of Rep. Act No. 6425 as amended which provides:

SEC. 16. *Possession or Use of Regulated Drugs.* - The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos 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.

To be liable for the crime, the following elements must concur: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.^[12] All these were found present in the instant case.

While appellant interposes the defense of frame-up, we view such claim with disfavor as it can easily be fabricated and is commonly used as a facile refuge in drug cases.^[13] In cases involving violations of the Dangerous Drugs Act, credence is given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.^[14]

In this case, SPO1 Ilagan found *shabu* in appellant's room; but appellant retorts that it was planted. The latter's daughter, Liezel Nuñez, testified on the alleged planting of evidence as follows:

x x x x

Q: While you were walking towards the direction of your bath room at that time have you notice anything which catches your attention?

A: I saw a man inside the room taking a plastic from his bag, sir.

Q: Did you also notice, what did that man do with that plastic in the bag?

A: He put **under the bed** fronting the door, sir.

x x x

x

Q: Can you describe to this Honorable Court what was that something that the man took out from his bag and placed the same underneath your parents' bed?

A: It is a plastic containing like a tawas, sir.

Q: Have you noticed Miss Witness about how many plastic bag (sic) did the man take from his bag?

A: **Only one**, sir.^[15] [Emphasis supplied.]

Assuming *arguendo* that an officer placed a sachet of *shabu* under appellant's bed, appellant had not advanced any reason to account for the thirty-one (31) packets of *shabu* and drug paraphernalia collected from the dresser in his room. Instead, he readily signed the Receipt for Property Seized and the Certification of Orderly Search. Neither did appellant's daughter identify the police officer who allegedly planted evidence. Absent any compelling proof why SPO1 Ilagan would falsely testify against appellant, the presumption of regularity in the performance of official duty stands and we agree that his testimony is worthy of full faith and credit.^[16]

In a further effort to impeach the credibility of the policemen, appellant questions the non-presentation of the barangay officials who purportedly observed the search. The matter of presentation of witnesses, however, is neither for accused nor even for the trial court to decide. Discretion belongs to the prosecutor as to how the State should present its case. The prosecutor has the right to choose whom he would present as witness.^[17] It bears stressing that by no means did the barangay officials become part of the prosecution when they were asked to witness the search. Hence, even the accused could have presented them to testify thereon.

Appellant alleges that SPO1 Ilagan verified his presence inside the room during the search in contrast to PO2 Ortega's account. The records, however, disclose otherwise. On direct examination, PO2 Ortega recounted:

FISCAL:

Q: What did you do next?

WITNESS:

A: Capt. Mundin together with Raul and then the three of us went to the room of Raul Nuñez, sir.

x x x x