

THIRD DIVISION

[G. R. No. 179700, June 22, 2009]

GWYN QUINICOT Y CURATIVO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

Before Us is an appeal which seeks the reversal of the Decision^[1] of the Court of Appeals dated 26 October 2006 in CA-G.R. CR No. 27835 affirming *in toto* the Joint Judgment^[2] of the Regional Trial Court (RTC) of Negros Oriental, Branch 30, Dumaguete City, in Criminal Cases No. 14855-14856, and its Resolution^[3] dated 6 September 2007 denying petitioner Gwyn C. Quinicot's Motion for Reconsideration.

Two informations both dated 21 September 2000 were filed before the RTC of Negros Oriental charging petitioner Quinicot with violation of Sections 16^[4] and 15, ^[5] respectively, of Republic Act No. 6425, otherwise known as The Dangerous Drugs Act of 1972. The accusatory portions of the informations read:

Crim. Case No. 14855

That on or about the 21st day of September, 2000 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there, wilfully, unlawfully and feloniously, have and keep in his possession two (2) transparent plastic sachets containing Methamphetamine Hydrochloride also known as shabu weighing more or less 5.1 grams.^[6]

Crim. Case No. 14856

That on or about the 21st day of September, 2000 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there wilfully, unlawfully and feloniously, sell and deliver to a poseur buyer (1) small transparent plastic sachet containing suspected Methamphetamine hydrochloride also known as shabu weighing more or less 0.2 grams.^[7]

When arraigned, petitioner, assisted by counsel *de parte*, pleaded "Not Guilty" to the crimes charged. After the pre-trial conference, the cases were tried jointly.

The prosecution presented three witnesses: (1) Police Officer (PO) 1 Domingo Marchan, member of the Philippine National Police (PNP) assigned at the 701st Criminal Investigation and Detection Team; (2) PO2 Allen June Germodo, member of

the PNP assigned at the Provincial Narcotics Office of Negros Oriental; and (3) Police Inspector (P/Insp.) Josephine S. Llena, Forensic Chemist, PNP Crime Laboratory. From their collective testimonies, the version of the prosecution is as follows:

At around 11:20 a.m. of 21 September 2000, a confidential informant/agent called the petitioner by phone. Thereafter, PO1 Marchan talked to petitioner and informed the latter that he was buying P300.00 worth of *shabu*. PO1 Marchan was casually introduced to the petitioner as Dondon. A team was formed by team leader Police Senior Inspector (PSI) Crisaleo Tolentino to conduct a buy-bust operation against petitioner. PO1 Marchan was designated as the poseur-buyer, while the other members who served as back-ups were PO3 Manuel Sanchez, Police Inspector Rolando Caña and PO2 Allen Germodo. PSI Tolentino gave PO1 Marchan three one-hundred peso bills^[8] which he marked with his initials.^[9]

At around 12:20 p.m., they went to Chin Loong Restaurant and conducted the buy-bust operation. PO2 Germodo was positioned in front of the restaurant, five to ten meters away from PO1 Marchan and petitioner. PO1 Marchan saw petitioner and a woman sitting on a stool in the bar. PO1 Marchan approached petitioner and asked him if he had *shabu* worth P300.00. Petitioner answered in the affirmative. PO1 Marchan gave the P300.00 marked money, and in return, petitioner gave him a plastic sachet^[10] containing a white crystalline substance. When PO1 Marchan executed the pre-arranged signal - touching his hat - PO2 Germodo rushed towards petitioner and PO1 Marchan and identified themselves as police officers. Petitioner was informed he violated the law on selling *shabu*. PO2 Germodo bodily searched petitioner and recovered two plastic sachets^[11] from the brown belt purse of the latter. He likewise recovered from petitioner the marked money, a disposable lighter, and a tooter.^[12] The petitioner was brought to the police station. PO1 Marchan issued a receipt^[13] for the items recovered from the him.

Per request^[14] of PSI Tolentino, the three plastic sachets containing white crystalline substance were sent to the Negros Oriental Provincial Crime Laboratory for forensic laboratory examination. P/Insp. Llena conducted the chemical examination on the following: (1) specimen A^[15] with a weight of 0.119 gram; (2) specimen B^[16] with a weight of 2.1832 grams; and (3) specimen C^[17] with a weight of 2.6355 grams. The results as contained in Chemistry Report No. D-146-2000^[18] showed that the specimens contained methylamphetamine hydrochloride.

PO1 Marchan disclosed that prior to 21 September 2000, on 19 September at around 5:00 p.m., he first saw petitioner at Music Box and offered to buy from the latter *shabu* without specifying the amount and quantity. Petitioner did not give him *shabu*, so he (PO1 Marchan) left the place, as he was only instructed to familiarize himself with petitioner's physical features and voice. He added he could not reveal the identity of the informant in court, because it would endanger the life of the latter.

For the defense, Joel D. Patola, a Minister of the Philippine General Council of the Assemblies of God, and the petitioner, an employee of the Department of Public Works and Highways (DPWH), took the stand.

Petitioner alleges that no buy-bust operation occurred and that the evidence - *shabu*

- allegedly confiscated from him was planted evidence.

Petitioner narrated that at around 10:00 a.m. of 21 September 2000, he was at Chin Loong Restaurant ordering *pansit* and buttered chicken that he would take out for lunch. While waiting for his order, he saw a certain Narvic Pleider and one Orlyn taking their snacks. Orlyn approached petitioner and offered to pawn a diver's watch to him which the latter declined, saying he had no money. When he was informed by the waiter that his order would still take some time to prepare, he rode his motorcycle and went to St. Paul to fetch his son. He brought his son to the house of his parents-in-law at Purok Kalubihan, Daro, Dumaguete City.

At 11:45 a.m., he went back to Chin Loong Restaurant to get his order. He ordered *siopao* and Coke and asked for the chit. He sat at the outdoor bar and saw Joel Patola taking his snack. When the waiter served the *siopao*, Orlyn, together with two other men, approached him. Orlyn asked him if he knew someone who was selling *shabu*, and he replied that he did not know anyone, and that he had no time because he was in a hurry. The two men, who turned out to be police officers in civilian attire, forced him to go with them. No warrant of arrest or search warrant was presented. He was forced to ride a pedicab and was brought to the police station.

At the police station, he was brought to the Office of the Central Intelligence and Detection Group located at the back of the station. He was made to sit on a chair with Narvic, PO1 Marchan and PO2 Germodo surrounding him. While the two police officers were in the office of PSI Tolentino, Narvic told him to settle the matter for P50,000.00. He asked Narvic what settlement he was talking about, then told him the latter had no money and would not give the amount because he had not committed anything wrong. When PO1 Marchan came out, petitioner asked permission to call his parents. He requested his parents to come to the police station, and they arrived at 1:30 p.m. He informed his father of what happened to him and what Narvic told him regarding the settlement. His father got mad, because he knew Narvic as the one who framed him in a prior case. His father was approached by Narvic, who talked about the settlement. His father got angry and left. When his parents were gone, Narvic asked him if they would settle before 5:00 p.m.; otherwise, a case would be filed against him.

At 5:00 p.m., petitioner's parents came back with Atty. Rommel Eramas, who told them to let the police file the case. At 6:00 p.m., an inquest proceeding was conducted before the Office of the City Prosecutor. The *shabu*, wallet, tube^[19] and other paraphernalia were presented. During the inquest proceedings, he knew that the police had planted the *shabu*. He denied possession of the *shabu* and ownership of the wallet. He likewise denied selling *shabu* to Narvic or to Orlyn.

Petitioner claimed that Orlyn was the best friend of his sister, while he knew Narvic to be an informer of the Presidential Anti Organized Crime headed by a certain Captain Macabali. He alleged that Narvic once gave him money to buy *shabu* from a certain Ampil, and for that he was arrested on 19 March 1999 at Calindagan for selling *shabu*. He said he was acquitted in said case for lack of evidence.

Petitioner explained he did not call the attention of Joel Patola when he was forced to board the pedicab, because he was afraid. He said he did not file a complaint against the two police officers who arrested him and that, prior to 21 September

2000, he did not know said police officers and had no misunderstanding or quarrel with them.

Joel Patola^[20] narrated that at noon of 21 September 2000, he was at the Chin Loong Restaurant eating snacks at the outdoor bar. He saw petitioner arrive and sit one and a half meters away from him. He saw a woman approach petitioner, and the two conversed. Two men sat beside the woman. After three to five minutes of conversation, petitioner was arrested. Patola said he wondered why petitioner was arrested when he was just sitting and eating. He did not see petitioner give anything to the lady. He even saw his former classmate, PSI Tolentino, who joined the two policemen in hailing a pedicab. Petitioner was forced to ride in the pedicab with the two policemen. He claimed he testified voluntarily and no one requested him to do so. Patola claimed that when he was on his way to his office, he saw petitioner in court and told him he would testify.

In its Joint Judgment dated 6 August 2003, the trial court found petitioner guilty as charged. The dispositive portion of the decision reads:

WHEREFORE, finding the accused Gwyn Quinicot y Curativo guilty beyond reasonable doubt of the crime of illegal possession of shabu in Criminal Case No. 14855 in violation of Section 16, Article III, Republic Act No. 6425, as amended, and of the offense of illegal selling of shabu (sic) Criminal Case No. 14856 in violation of Section 15, Article III, Republic Act No. 6425, as amended, there being no mitigating or aggravating circumstance, applying the Indeterminate Sentence Law, he is hereby sentenced to suffer in each case imprisonment ranging from a minimum of six (6) months and one (1) day of arresto mayor up to four (4) years and two (2) months of prision correc(c)ional as maximum penalty.

All the aforestated dangerous drugs subject matter of these cases are hereby declared forfeited in favor of the government to be disposed in accordance with law.

Costs against the accused.^[21]

The trial court found petitioner to have violated Sections 15 and 16 of Republic Act No. 6425, as amended, when he sold one plastic sachet containing .0119 gram of methamphetamine hydrochloride to poseur-buyer PO1 Marchan; and that PO2 Germodo recovered from petitioner, *inter alia*, the marked money used in the buy-bust operation amounting to P300.00 and two more plastic sachets containing 2.1832 grams and 2.6355 grams of methamphetamine hydrochloride (*shabu*).

In convicting petitioner, the trial court gave more credence to the testimonies of the prosecution witnesses and upheld the buy-bust operation conducted against petitioner. The defense of frame-up invoked by petitioner was not believed by the trial court.

Aggrieved with the decision, petitioner appealed his conviction to the Court of Appeals assigning as sole error the following:

THE LOWER COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT ON THE GROUND THAT HIS GUILT HAS NOT BEEN

ESTABLISHED BEYOND REASONABLE DOUBT.

On 26 October 2006, the Court of Appeals affirmed *in toto* the RTC's decision.^[22] The Motion for Reconsideration^[23] filed by petitioner was denied^[24] on 6 September 2007.

Petitioner is now before this Court seeking a review of the decision of the Court of Appeals, arguing that the appellate court gravely erred in convicting him on the ground that his guilt had not been proven beyond reasonable doubt.

Petitioner argues that the testimonies of PO1 Marchan and PO2 Germodo are incredible and untrustworthy. He denies that a buy-bust operation took place, and that the evidence against him is planted evidence.

We find the testimonies of PO1 Marchan and PO2 Germodo credible and straightforward. It is a fundamental rule that the trial court's findings that are factual in nature and that involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court was in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial.^[25] The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.^[26] There being no compelling reasons to deviate from the findings of the trial court and the Court of Appeals, we stick by their findings.

The presumption of regularity in the performance of official duties likewise stands in this case. Said presumption was not overcome, as there was no evidence showing that the two police officers were impelled by improper motive. As admitted by petitioner, prior to 21 September 2000, he neither knew nor had any quarrel or misunderstanding with any or both of the afore-named policemen.

In asserting that there was no buy-bust operation and that he was framed, petitioner asserts that (1) a surveillance was not conducted; (2) it was highly unbelievable that PO1 Marchan would know that petitioner was a drug pusher and that the former, a total stranger, would sell *shabu* to the latter; (3) it was unlikely that the buy-bust operation was conducted at noon; (4) the confidential informant was not presented in court; and (5) the receipt of property seized was signed only by PO1 Marchan without any witnesses.

These assertions will not exonerate the petitioner.

Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers.^[27] A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment.^[28] Flexibility is a trait of good police work.^[29] We have held that when time is of the essence, the police may dispense with the need for prior surveillance.^[30] In the instant case, having been