

## THIRD DIVISION

**[ G.R. No. 177777, December 04, 2009 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
FERNANDO GUTIERREZ Y GATSO, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

On appeal is the Decision<sup>[1]</sup> dated January 22, 2007 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01688, affirming the decision in Criminal Case No. 12318 of the Regional Trial Court (RTC), Branch 65 in Tarlac City. The RTC found accused-appellant Fernando Gutierrez guilty of the crime of illegal possession of dangerous drugs punishable under Section 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

An Amended Information<sup>[2]</sup> charged accused-appellant Fernando with violation of Sec. 11, Art. II of RA 9165, allegedly committed as follows:

That on or about September 12, 2002 at around 4:45 o'clock in the afternoon at Purok Jasmin, Poblacion North, Municipality of Ramos, Province of Tarlac, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously possess two (2) small plastic [sachets] containing white crystalline substance weighing more or less 14.052 grams of shabu.

Contrary to law.

Arraigned on December 12, 2002, Fernando, assisted by counsel *de officio*, entered a plea of "not guilty." After pre-trial, trial on the merits ensued.

To substantiate the accusation, the prosecution presented the testimonies of the arresting police officers. Offered in evidence too was Exhibit "B," captioned Chemistry Report No. D-186-2002 and prepared and signed by Ma. Luisa G. David, forensic chemist of the Tarlac Provincial Crime Laboratory Office. Exhibit "B" contains the following entries, among others: the precise time and date the specimen confiscated from Fernando was submitted for examination by the requesting party, the time and date of the examination's completion, and the results of the examination.

Culled from the challenged CA decision, the People's version of the incident is synthesized as follows:

At around 4:45 p.m. on September 12, 2002, the police station of Ramos, Tarlac

acting on a tip regarding a *shabu* transaction (drug-pushing) taking place somewhere in Purok Jasmin, Poblacion Norte, dispatched a three-man team composed of PO3 Romeo Credo, P/Insp. Napoleon Dumlao, and SPO1 Restituto Fernandez to the place mentioned. Arriving at the target area, the three noticed Fernando and one Dennis Cortez under a *santol* tree handing plastic sachets containing white crystalline substance to certain individuals. At the sight of the police officers, Fernando and the others scampered in different directions. After a brief chase, however, one of the three police operatives caught up with and apprehended Fernando, then carrying a bag.

When searched in the presence of the *barangay* captain of Poblacion Norte, the bag yielded the following, among other items: plastic sachets containing white crystalline substance weighing 15 grams or less, one small plastic sachet/bag containing white powdered substance, one set of pipe tooter tube glass, one laptop computer, one Motorola cell phone, one rolled aluminum foil, three bundles of plastic used for repacking, one weighing scale, a Metrobank deposit slip in the name of Dhen Bito, and cash amounting to PhP 1,500 in different denominations. Forthwith, Fernando and the seized items were brought to the Ramos police station and the corresponding request for examination was then prepared. The following day, the confiscated sachets were sent to and received by the Tarlac Provincial Crime Laboratory Field Office. When subjected to qualitative examination, the substances in the plastic sachets and plastic bags were found positive for *methamphetamine hydrochloride*.

For its part, the defense offered in evidence the sole testimony of Fernando. His defense relied on denial and alleged fabrication of the charge by the police, thus:

At around 4:35 in the afternoon of September 12, 2002, while at home in Anao, Tarlac resting, Fernando was asked by a neighbor, Cortez, to accompany him to Ramos, Tarlac to buy a duck. At that time, Cortez had with him a backpack, the contents of which Fernando knew nothing about.

In Ramos, Tarlac, the two, after buying a duck, repaired to a house whose owner was not known to Fernando. Cortez went inside the house with his backpack, leaving Fernando outside the front yard. Not long thereafter, the police arrived, fired a warning shot, and went inside the house. After a while, the policemen emerged from the house accompanied by two individuals who pointed to Fernando as Cortez's companion, a fact Fernando readily admitted. The policemen then proceeded to arrest Fernando on the pretext he and Cortez were earlier peddling *shabu* in the town of Paniqui. As they were not able to apprehend Cortez, the arresting officers had Fernando hold and admit ownership of Cortez's backpack earlier taken from inside the house. Fernando denied ownership of the backpack that contained items belonging to Cortez, such as but not limited to the cell phone, laptop computer, driver's license, and wallet. A bank book and Metrobank deposit slip signed by Cortez were also inside the bag.

### **The Ruling of the RTC and CA**

After due proceedings, the RTC, invoking, among other things, the presumptive regularity in the performance of official duties, rendered, on September 1, 2005, its judgment<sup>[3]</sup> finding Fernando guilty beyond reasonable doubt of possession of 14.052 grams of the prohibited drug, *methamphetamine hydrochloride*, commonly

known as *shabu*. The *fallo* reads:

WHEREFORE, the prosecution having proven the guilt of the accused beyond reasonable doubt, the court hereby sentences him to suffer the penalty of life imprisonment, to pay the fine of P400,000.00 and to pay the costs.

The Tarlac Provincial Crime Laboratory who has custody of the 14.052 grams of shabu, subject of this case is hereby ordered to transmit the same to the Philippine Drug Enforcement Agency for proper disposition and furnish the court proof of compliance.

SO ORDERED.

Therefrom, Fernando went on appeal to the CA, docketed as CA-G.R. CR-H.C. No. 01688.

Eventually, the CA issued the assailed decision dated January 22, 2007, affirming that of the trial court, thus:

WHEREFORE, premises considered, the Decision dated September 1, 2005 of the Regional Trial Court, Branch 65 of Tarlac City in Criminal Case No. 12318 finding accused-appellant Fernando Gutierrez y Gatso GUILTY beyond reasonable doubt of violation of Section 11, Rule II of Republic Act No. 9165 or the Dangerous Drugs Act of 2002 is hereby AFFIRMED.

SO ORDERED.<sup>[4]</sup>

### **The Issues**

Undaunted, Fernando is now with this Court via the present recourse raising the very same assignment of errors he invoked before the CA, thus:

#### **I**

THE COURT A QUO ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES.

#### **II**

THE TRIAL COURT ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTION 11, ARTICLE II, R.A. NO. 9165.<sup>[5]</sup>

The foregoing assignment of errors can actually be reduced and summarized to one: the credibility of the testimonies of the three police officers as prosecution witnesses and the weight to be accorded on said parol evidence.

The parties chose not to file any supplemental briefs, maintaining their respective positions and arguments in their briefs filed before the CA.

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

The appeal is bereft of merit.

In prosecution proceedings involving illegal possession or sale of prohibited drugs, credence is usually accorded 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 be evidence to the contrary. Moreover, in the absence of proof of motive on the part of the police officers to falsely ascribe a serious crime against the accused, the presumption of regularity in the performance of official duty, as well as the trial court's assessment on the credibility of the apprehending officers, shall prevail over the accused's self-serving and uncorroborated claim of frame-up.<sup>[6]</sup>

In the case at bench, there is nothing in the records that would dictate a departure from the above doctrinal rule as far as the testimonies of prosecution witnesses PO3 Credo, SPO1 Fernandez, and P/Insp. Dumlao are concerned. We see no valid reason, in fine, to discredit the veracity of their narration. And as aptly noted by the trial court, there is no evidence of any ill motive on the part of the police officers who merely responded to a tip about a drug-pushing incident in their area.

The prosecution's evidence established the fact that a *bona fide* follow-up operation was undertaken following a phone call, reporting some drug-pushing activities in Poblacion Norte. To recall, PO3 Credo, SPO1 Fernandez, and P/Insp. Dumlao, Chief of the Ramos police station, made up the team that proceeded to the reported area to check the veracity of the drug-related call. Upon reaching the target site, they espied Fernando passing sachets of white crystalline substance. And Fernando, upon noticing the arrival of policemen, lost no time in fleeing from the scene. PO3 Credo gave chase and eventually collared the bag-carrying Fernando and conducted an immediate search on the bag. The search led to the discovery of two sachets and one small plastic bag containing suspicious-looking crystalline substance and drug paraphernalia, among other items.

Thereafter, the police team brought Fernando to the Ramos police station and a request was immediately made for the examination of the seized items. After laboratory examination, the white crystalline substance contained in the sachets was found positive for *shabu*.

Fernando now questions the credibility of the prosecution witnesses and the weight the trial court gave to their narration of events, laying stress on the inconsistencies and/or discrepancies of their respective accounts. The adverted inconsistencies/discrepancies relate to the place where the police initially spotted and apprehended Fernando and where the confiscated bag was searched. Fernando urges the Court to consider: (1) SPO1 Fernandez and P/Insp. Dumlao testified first seeing Fernando and the three others under a *santol* tree exchanging sachets of drugs, while PO3 Credo testified that they (Fernando and three others) were under a *kubo*; and (2) PO3 Credo testified that, immediately upon apprehending Fernando, he searched the latter's bag and found the contraband inside. On the other hand,

SPO1 Fernandez and P/Insp. Dumlao placed the search as having been effected in the police station in the presence of the *barangay* captain of Poblacion Norte.

The inconsistencies Fernando cited relate to extraneous matters that do not in any way affect the material points of the crime charged. The seeming inconsistency with regard to where Fernando and Cortez exactly were when the sachets of *shabu* changed hands--be they in a *kubo*, as PO3 Credo mentioned,<sup>[7]</sup> or under a *santol* tree, as SPO3 Fernandez<sup>[8]</sup> and P/Insp. Dumlao<sup>[9]</sup> asserted--is of little moment and hardly of any bearing on the central fact of the commission of the crime. In context, the more important occurrence relates to Fernando and his companions scampering in different directions when the policemen chanced upon them, and that Fernando, when apprehended, was holding a bag which contained *shabu* and drug paraphernalia--facts categorically confirmed by the prosecution witnesses. It is perhaps too much to hope that different eyewitnesses shall give, at all times, testimonies that are in all fours with the realities on the ground. Minor discrepancies in their testimonies are in fact to be expected; they neither vitiate the essential integrity of the evidence in its material entirety nor reflect adversely on the credibility of witnesses. Inconsistencies deflect suspicions that the testimony is rehearsed or concocted. And as jurisprudence teaches, honest differing accounts on minor and trivial matters serve to strengthen rather than destroy the credibility of a witness to a crime.<sup>[10]</sup>

We took pains in reviewing the transcript of stenographic notes taken during the trial and found nothing to support Fernando's allegations of inconsistencies between or among the prosecution witnesses' versions of relevant events. For instance, PO3 Credo testified that, after arresting Fernando, he immediately searched the bag the latter was carrying.<sup>[11]</sup> This account does not contradict the testimonies of SPO3 Fernandez<sup>[12]</sup> and P/Insp. Dumlao,<sup>[13]</sup> who both recounted the search made in the police station in the presence of a *barangay* captain. As earlier indicated, it was PO3 Credo who arrested Fernando<sup>[14]</sup> and had the opportunity to make the search at the scene of the crime.

On the other hand, SPO3 Fernandez and P/Insp. Dumlao ran after Cortez and the two others, eventually arresting Cortez, who was initially included in the original Information.<sup>[15]</sup> What is fairly deducible from the testimonies of the arresting operatives is that there were two separate searches actually made: (1) the first done by PO3 Credo immediately after he arrested Fernando which is the usual and standard police practice; and (2) a subsequent one effected at the police station where the bag was apparently marked and its contents inventoried.

The Court notes that immediately after his arrest, Cortez was also searched but no illegal drugs were found in his person. It was obviously for this reason that after the original Information was filed following an inquest, Fernando and Cortez filed a joint Motion for Preliminary Investigation and/or Re-Investigation.<sup>[16]</sup> The preliminary investigation resulted in the filing of the Amended Information that dropped Cortez as accused paving the way for the dismissal of the charge against him, but retained Fernando as the sole accused in Criminal Case No. 12318.

To reiterate a long-settled rule, the Court will not disturb the trial court's evaluation of the credibility of witnesses, save when it had overlooked, misunderstood, or