

SECOND DIVISION

[**G.R. No. 175940 (Formerly G.R. Nos. 155361-62), February 06, 2008**]

**THE PEOPLE OF THE PHILIPPINES, Appellee, vs. ANSON ONG
a.k.a. ALLAN CO, Appellant.**

D E C I S I O N

TINGA, J,:

In dubio pro reo.^[1]

Subject of this automatic review is the Decision^[2] of the Court of Appeals dated 7 August 2006 which affirmed the Judgment^[3] of the Regional Trial Court of Pasay City, Branch 110, convicting appellant Anson Ong *alias* Allan Co of illegal sale and possession of *shabu*.

Two separate Informations were filed before the trial court. In Criminal Case No. 97-0017, appellant was accused of illegal sale of *shabu*, thus:

That on or about the 21st day of [April] 1997, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver **989.05** grams of Methamphetamine Hydrochloride (*shabu*), a regulated drug.

Contrary to law.^[4]

In Criminal Case No. 97-0018, appellant was charged with illegal possession of *shabu* allegedly committed as follows:

That on or about the 21st day of April 1997, Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, **Anson Ong** alias "**Allan Co,**" did then and there willfully, unlawfully and feloniously have in his possession, custody and control 988.85 grams of Methamphetamine Hydrochloride (*shabu*), a regulated drug without the corresponding license.

Contrary to law.^[5]

Upon arraignment, appellant pleaded not guilty to both charges. A joint trial of the two cases ensued.

The operative facts are narrated by prosecution witnesses who comprised members of the buy-bust team. Sometime in April 1997, Col. Zoila Lachica (Lachica) was

tipped off by a female walk-in informant that a group, led by a Chinese national, was engaged in drug trafficking in Pasay City. Upon verification of said information, a meeting took place between Lachica and the informant where the latter was able to arrange a drug deal with appellant in the vicinity of Heritage Hotel.^[6] Lachica then instructed Investigator Oscar Coballes (Coballes) to prepare the boodle money consisting of four P500.00 bills and five P100.00 bills placed on top of nine (9) bundles of paper cut to the size of the peso bills. These bills were then submitted to the PNP Crime Laboratory for ultraviolet powder dusting.^[7] Before lunchtime on 21 April 1997, Lachica organized a team and planned the conduct of a buy-bust operation. The twelve-man team was composed of Lachica, Coballes, Police Supt. Edgar Danao (Danao), P/Inspector Rolando Montes (Montes), PO3 Manuelito Lagradilla (Lagradilla), SPO2 Wilfredo Saballa (Saballa), SPO3 Pardo, SPO2 Pedro Tan, the confidential informant, and other civilian agents. Danao acted as the team leader with Montes assisting him. Saballa was designated as the poseur-buyer and the other members of the team were tasked to secure the area.^[8]

After lunch, the group proceeded to the parking lot of San Juan de Dios Hospital onboard four (4) vehicles, including a motorcycle driven by Lagradilla. At about 3:00 p.m., they reached the parking lot where Danao conducted the final briefing and then deployed his men strategically between the premises of Heritage Hotel and Copacabana Hotel.^[9] At 4:00 pm, Saballa and the informant went to Heritage Hotel while the other team members strategically posted themselves within the hotel premises.^[10]

Fifteen minutes later, Saballa and the informant left Heritage Hotel and proceeded to the adjacent Copacabana Hotel where he waited at the main entrance of the lobby. Suddenly, a black Honda Civic car with Plate No. ULN 766 arrived and parked along the driveway near the front entrance.^[11] The informant approached the car while Saballa was left behind holding the black bag containing the boodle money.^[12] Upon signal by the informant, Saballa came up to the right front door. Saballa showed the contents of the bag to the driver of the car, who was later identified as appellant. He then handed the bag to him.^[13] Instantaneously, a man approached the car, took the boodle money from appellant and ran away.^[14] Coballes ran towards the driver's side and poked his gun at appellant. Appellant tried moving the car but Coballes stood in front and blocked it. Appellant was then ordered to open the door. Coballes saw a red bag containing white crystalline substance inside the car and took it into custody.^[15] Meanwhile, Lagradilla chased the man who took the boodle money around the parking area of Copacabana Hotel.^[16] While on the run, Lagradilla saw the man throw the money inside a passing white Toyota car driven by a certain Chito Cua (Cua). Instead of pursuing the man, Lagradilla blocked the white Toyota car and arrested Cua.^[17]

Appellant presented an entirely different account of the incident on 21 April 1997. Appellant, who apparently does not know English and Tagalog was assisted by an interpreter, narrated that he is a resident of Chuan Chow, People's Republic of China. Upon the suggestion of Lau Chan, appellant decided to go to the Philippines to start a clothing business. In the morning of 21 April 1997, appellant told Lau Chan that he wanted to go to Baclaran. Lau Chan, who himself was planning to go to the casino at Heritage Hotel, asked appellant to meet up with him. Appellant tried

calling Lau Chan on this cellphone but the latter was not answering. This prompted appellant to go to Heritage Hotel to look for Lau Chan. At around 4:00 p.m., appellant was walking along Epifanio Delos Santos Avenue towards the direction of the Light Rail Transit when he noticed a commotion in front of the hotel and saw some men carrying guns. Fearing for his safety, appellant decided to walk faster but someone stopped him and poked a gun at him. He was made to board a white car in which he met Cua for the first time. They were then brought to Camp Crame for questioning. It was Cua who translated the questions propounded by the police officers to appellant. He was informed by Cua that he was arrested for failure to show any document regarding his stay in the country. During arraignment however, he learned that he was being charged of possession and sale of *shabu*.

Finding the testimonies of the prosecution witnesses credible as against the bare and self-serving assertions of appellant, the trial court rendered a decision finding appellant guilty as charged. The dispositive portion of the 11 February 2002 Decision reads:

WHEREFORE, in view of the foregoing, the Court finds the herein accused ONG POK PIW a.k.a. ANSON ONG a.k.a. ALLAN CO, GUILTY beyond reasonable doubt of two (2) offenses for Violations of Section 15 and 16, Article III of Republic Act [No.] 6425, as amended in relation to Section 20 and 21 of Article IV of said law and hereby imposes on him the penalty of two (2) *RECLUSION PERPETUAS* in these cases and a fine in the total amount of P200,000.00 in these cases without subsidiary imprisonment in case of insolvency.

The Methamphetamine Hydrochloride or "*shabu*" in Criminal Case No. 97-0017 for Violation of Section 15 of Republic Act [No.] 6425, as amended, weighing 989.05 grams and the Methamphetamine Hydrochloride or "*shabu*" in Criminal Case No. 97-0018 weighing 988.85 grams are hereby declared confiscated in favor of the government. The PNP Crime Laboratory at Camp Crame, Quezon City or its duly authorized representative which has custody and possession of said regulated drugs are hereby directed to immediately cause the delivery and transportation thereof to the Dangerous Drugs Board for proper disposition in accordance with law. The Chief of said office is further directed to inform this Court within 20 days from receipt hereof of the action taken thereon.

The period during which the herein accused was under detention during the pendency of these cases shall be credited to him in full provided he agreed to abide by strictly with the rules and regulations of the City Jail.

SO ORDERED.^[18]

An appeal was directed to this Court. However, in a Resolution^[19] dated 20 February 2006, the case was transferred to the Court of Appeals in light of our pronouncement in *People v. Mateo*.^[20]

On 7 August 2006, the Court of Appeals rendered the assailed decision affirming with modification the trial court's ruling, to wit:

WHEREFORE, premises considered, the judgment rendered by the Regional Trial Court, Branch 110, Pasay City, in Criminal Case Nos. 97-0017 and 97-0018 is hereby **AFFIRMED with modification**. As modified, the fine is increased to Five Hundred Thousand Pesos (P500,000.00) for each offense or a total of ONE MILLION PESOS (P1,000,000.00).

SO ORDERED.^[21]

In finding appellant guilty, the appellate court strongly relied on the testimonies of the police officers and dismissed the imputed inconsistencies in their statements as being minor.

At the core of this appeal is the issue of whether the prosecution was able to prove beyond reasonable doubt the guilt of appellant.

Appellant primarily questions the credibility of the prosecution witnesses. He claims that their testimonies were tainted with inconsistencies which even the trial court had noted in its decision. Appellant relies on said observation to support his acquittal based on reasonable doubt. He asserts that his conviction must rest on the strength of the prosecution's own evidence and not on the weakness of the evidence for the defense.

The Office of the Solicitor General (OSG), in its Brief,^[22] insists that all the elements of sale and illegal possession of *shabu* were duly established by the prosecution. It avers that appellant was caught in *flagrante delicto* selling *shabu* to the poseur-buyer in a legitimate buy-bust operation.^[23] Moreover, when the poseur-buyer and Coballes opened the door of appellant's car, they saw a red bag on the floor containing white crystalline substances which were later tested and found positive for the presence of *shabu*.^[24] The OSG contends that the opinion of the trial court with respect to the actuations of the prosecution witnesses on the stand did not affect its judgment of conviction because the trial court lent full faith and credence to the collective testimonies of the police officers who are presumed to have performed their duties in accordance with law.^[25]

For the prosecution of illegal sale of drugs to prosper, the following elements must be proved: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the *corpus delicti*.^[26]

The prosecution seeks to establish the presence of these elements through the testimonies of the police officers involved in the buy-bust operation. The innocence or culpability of appellant thus hinges on the issue of credibility. It is an oft-repeated rule that findings of facts of the trial court, as affirmed by the appellate court, are conclusive on this Court, absent any evidence that both courts ignored, misconstrued, or misinterpreted cogent facts and circumstances of substance which, if considered, would warrant a modification or reversal of the outcome of the case.^[27] This case falls under the exception.

In determining the credibility of prosecution witnesses regarding the conduct of buy-

bust operation, the “objective test,” as laid down in *People v. Doria*,^[28] is utilized. It has been held that it is the duty of the prosecution to present a complete picture detailing the buy-bust operation—from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal subject of sale. The manner by which the initial contact was made, the offer to purchase the drug, the payment of the buy-bust money, and the delivery of the illegal drug must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.^[29]

In *People v. Ong*^[30] and *Cabugao v. People*^[31] where the “objective test” was also applied, chasmic deficiencies that similarly marked the prosecution evidence led to the absolution of the accused. In *Ong*, also involving Chinese nationals as accused, the prosecution evidence on the buy-bust operation was outrageously complete as the confidential informant who had sole knowledge of how the alleged illegal sale of *shabu* was initiated and how it was carried out was not presented as a witness.^[32] In *Cabugao*, the prosecution witnesses could not agree on the reason that prompted them to conduct the buy-bust operation. While the first witness testified that the tip came from their informants, the second witness maintained that no informer was involved in the operation.^[33]

In the case at bar, the evidence for the prosecution failed to prove all the material details of the buy-bust operation. The details of the meeting with the informant, the alleged source of the information on the sale of illegal drugs, appear hazy. Lachica declared that he met the informant for the first time a week before the buy-bust operation:

- Q Do you recall Mr. Witness when that walk-in informant visited your office?
- A I cannot recall the exact date but as far as I can remember she visited before the operation was conducted.
- FISCAL And you are referring to the operation on April 21, 1997?
- A Yes, sir.
- COURT How many days prior to the date of operation did that alleged walk-in informant go to your office?
- A I cannot remember the exact date but I think more or less one week before. More or less 1 week.^[34]

But Coballes testified that the informant reports to their office every now and then, thus:

- COURT A moment counsel, this informant, was he an employee of your office or an informant working for your office?
- WITNESS
- A He is an informant working from our office.