

THIRD DIVISION

[G.R. No. 181747, September 26, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NARCISO AGULAY Y LOPEZ, ACCUSED-APPELLANT.**

D E C I S I O N

CHICO-NAZARIO, J.:

For Review under Rule 45 of the Revised Rules of Court is the Decision^[1] dated 31 August 2007 of the Court of Appeals in CA-G.R. CR No. 01994 entitled, ***People of the Philippines v. Narciso Agulay y Lopez***, affirming the Decision^[2] rendered by the Regional Trial Court (RTC) of Quezon City, Branch 103, in Criminal Case No. Q-02-111597, finding accused-appellant Narciso Agulay y Lopez guilty of illegal sale and illegal possession of methamphetamine hydrochloride more popularly known as "***shabu***."

On 26 August 2002, accused-appellant was charged in an Information before the RTC of Quezon City with violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The Information reads:

That on or about the 24th day of August, 2002 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point twenty five (0.25) gram of methylamphetamine hydrochloride a dangerous drug.^[3]

When arraigned on 23 September 2002, accused-appellant pleaded not guilty.^[4] Thereafter, trial ensued.

During the trial, the prosecution presented the testimonies of Police Officer (PO) 2 Raul Herrera, the *poseur-buyer*, PO2 Reyno Riparip (member of the buy-bust team), and Forensic Analyst Leonard M. Jabonillo.

The prosecution's version of the events are narrated as follows:

On 24 August 2002, at around 6:30 in the evening, an informant arrived at Police Station 5 and reported to the Chief of the Station Drug Enforcement Unit (SDEU) that a certain "Sing" had been selling *shabu* at Brgy. Sta. Lucia, in Novaliches, Quezon City.

A police entrapment team was formed. PO2 Herrera was assigned as poseur-buyer and was given a P100.00 bill, which he marked "RH," his initials. A pre-operation report bearing control No. 24-SDEU-02 was made and signed by Police Inspector

(P/Insp.) Palaleo Adag dated 24 August 2002.

The buy-bust team rode in two vehicles, a Space Wagon and a Besta van, with a group of police officers inside. They stopped along J.P. Rizal St., Sta. Lucia, Novaliches, Quezon City.

PO2 Herrera and his informant stepped down from their vehicle and walked. The informant pointed the target pusher to PO2 Herrera. They approached and after being introduced to Sing, PO2 Herrera bought *shabu* using the marked P100.00 bill. Sing gave a small plastic sachet to PO2 Herrera who, thereafter, scratched his head as a signal. The other police companions of PO2 Herrera, who were deployed nearby, then rushed to the crime scene. PO2 Herrera grabbed Sing and then frisked him. PO2 Herrera recovered two (2) plastic sachets from Sing's pocket. He also got the marked money from Sing.

The following specimens were submitted to the Philippine National Police (PNP) Crime Laboratory of the Central Police District in Quezon City for chemical analysis:

Three (3) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and recorded net weights:

(A) (RH1-RG1) = 0.07 gm

(B) (RH2-RG2) = 0.09 gm

(C) (RH3-RG3) = 0.09 gm^[5]

Chemistry Report No. D-1020-2002 dated 25 August 2002 and prepared and presented in court by Forensic Analyst Leonard M. Jabonillo (of the PNP Crime Laboratory of the Central Police District of Quezon City) yielded the following results-

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the test for Methylamphetamine Hydrochloride, a regulated drug. x x x.

CONCLUSION:

Specimen A, B and C contain Methylamphetamine Hydrochloride, a regulated drug.^[6]

The defense, on the other hand, had an entirely different version of what transpired that night. It presented three witnesses: accused-appellant Narciso Agulay, Benjamin Agulay (brother of Narciso), and Bayani de Leon.

Accused-appellant Narciso Agulay narrated that at around 8:30 to 9:00 o'clock in the evening of 24 August 2002, he was manning his store when a car stopped in front of it. The passengers of said vehicle opened its window and poked a gun at him. The passengers alighted from the car, approached him and put handcuffs on him. Accused-appellant asked what violation he had committed or if they had a

search warrant with them, but the arresting team just told him to go with them. Accused-appellant requested that he be brought to the *barangay* hall first, but this request was left unheeded. Instead, he was immediately brought to the police station. Upon reaching the police station, PO2 Herrera handed something to PO1 Riparip. Thereafter, PO2 Herrera and PO1 Riparip approached and punched him on the chest. They removed his shorts and showed him a plastic sachet. Later that night, the arresting officers placed him inside the detention cell. After about 30 minutes, PO1 Riparip and PO2 Herrera approached him. PO2 Herrera told him that if he would not be able to give them P50,000.00, they would file a case against him, to which he answered, "I could not do anything because I do not have money."^[7]

Benjamin Agulay, brother of accused-appellant, testified that at around 8:30 to 9:00 o'clock in the evening of 24 August 2002, while he was smoking in their compound, a group of armed men in civilian clothes entered the place and arrested his brother, who was then manning a store. He tried asking the arresting officers what the violation of accused-appellant was but he was ignored. They then took accused-appellant to the police station.

On the other hand, the testimony of Bayani de Leon (a police asset of SPO1 Valdez of the buy-bust team) narrated that he, together with P/Insp. Suha, PO1 Herrera, PO2 Riparip, PO2 Gulferic and an arrested individual were on board a car while conducting a follow-up operation regarding a hold-up incident. When the car they were riding reached No. 51 J.P. Rizal Street, their team alighted and entered a compound. They saw accused-appellant and arrested him as he was allegedly involved in a hold-up incident, not with drug pushing. Accused-appellant was taken to Police Station 5.

On 17 February 2006, the RTC found accused-appellant guilty of the offense charged, and meted out to him the penalty of Life Imprisonment. The dispositive portion of the RTC Decision is as follows:

Accordingly, judgment is rendered finding the accused NARCISO AGULAY Y LOPEZ GUILTY beyond reasonable doubt of the crime of violation of Section 5 of R.A. 9165 as charged (for drug pushing) and he is hereby sentenced to suffer a jail term of LIFE IMPRISONMENT and to pay a fine of P500,000.00.

The methylamphetamine hydrochloride (in 3 sachets) involved in this case is ordered transmitted to the PDEA thru DDB for proper disposition.

^[8]

Accused-appellant filed his Notice of Appeal with Motion to Litigate as Pauper Litigant on 7 March 2006.

Accused-appellant filed his appellant's brief^[9] with the Court of Appeals on 22 September 2006.

On 31 August 2007, the Court of Appeals issued its Decision denying accused-appellant's appeal as follows:

WHEREFORE, finding no reversible error in the Decision appealed from, the appeal is DENIED. The Decision of the RTC dated February 17, 2006

is AFFIRMED.^[10]

Petitioner elevated the case to this Court *via* Notice of Appeal^[11] dated 21 September 2007. In its Resolution dated 2 April 2008, this Court resolved to:

(3) Notify the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice.

To avoid a repetition of the arguments, accused-appellant opted to adopt his appellant's brief dated 22 September 2006 while plaintiff-appellee adopted its appellee's brief dated 22 January 2007, instead of filing their respective supplemental briefs.

The issues raised are the following:

- I. THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE ACCUSED-APPELLANT WAS ILLEGALLY ARRESTED AND AS SUCH, THE SACHETS OF SHABU ALLEGEDLY RECOVERED FROM HIM ARE INADMISSIBLE IN EVIDENCE.
- II. THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.
- III. ACCUSED-APPELLANT CANNOT BE HELD LIABLE FOR THE CONSUMMATED CRIME OF ILLEGAL SALE OF *SHABU* BECAUSE OF THE FAILURE OF THE PROSECUTION TO ESTABLISH ALL OF ITS ESSENTIAL ELEMENTS.

Accused-appellant maintains that his arrest was illegal, and that the subsequent seizure of *shabu* allegedly taken from him is inadmissible as evidence against him. He also claims that the prosecution failed to prove his guilt beyond reasonable doubt, since the prosecution failed to show all the essential elements of an illegal sale of *shabu*.

From the foregoing issues raised by accused-appellant, the basic issue to be resolved hinges on whether accused-appellant was arrested in a legitimate "buy-bust" operation.

The law presumes that an accused in a criminal prosecution is innocent until the contrary is proved. The presumption of innocence of an accused in a criminal case is a basic constitutional principle, fleshed out by procedural rules which place on the prosecution the burden of proving that an accused is guilty of the offense charged by proof beyond reasonable doubt. Whether the degree of proof has been met is largely left for the trial courts to determine. Consistent with the rulings of this Court, it is a fundamental and settled rule that factual findings of the trial court and its calibration of the testimonies of the witnesses and its conclusions anchored on its findings are accorded by the appellate court high respect, if not conclusive effect, more so when affirmed by the Court of Appeals, as in this case. The exception is when it is established that the trial court ignored, overlooked, misconstrued or misinterpreted cogent facts and circumstances which, if considered, will change the outcome of the case. Considering that what is at stake here is the liberty of accused-appellant, we have carefully reviewed and evaluated the records of the RTC

and the Court of Appeals. On evaluation of the records, this Court finds no justification to deviate from the lower court's findings and conclusion that accused-appellant was arrested *in flagrante delicto* selling *shabu*.

In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements:

(1) identities of the buyer and seller, the object, and the consideration;
and

(2) the delivery of the thing sold and the payment therefor.^[12]

The testimonies of the prosecution witnesses proved that all the elements of the crime have been established: that the buy-bust operation took place, and that the *shabu* subject of the sale was brought to and identified in court. Moreover, PO2 Herrera, the poseur-buyer, positively identified accused-appellant as the person who sold to him the sachet containing the crystalline substance which was confirmed to be *shabu*.^[13] He narrated the events which took place the night accused-appellant was apprehended:

FIS. JURADO:

You said that you are stationed at Police Station 5, what were your duties there?

WITNESS:

As an operative sir.

FIS. JURADO:

What was your tour of duty on August 24, 2002?

WITNESS:

Broken hour sir.

FIS. JURADO:

But at around 6:30 in the evening, you are on duty?

WITNESS:

Yes, sir.

FIS. JURADO:

While you are on duty at that time and place, will you please inform this Honorable Court if there was an operation?

WITNESS:

Yes, sir.