

## SECOND DIVISION

[ G.R. NO. 175593, October 17, 2007 ]

**THE PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SALVADOR SANTOS, JR. Y SALVADOR, APPELLANT.**

### D E C I S I O N

**TINGA, J.:**

Salvador Santos, Jr. y Salvador (appellant) was charged before the Regional Trial Court of San Mateo, Rizal, Branch 77 with illegal sale and possession of *shabu* in violation of Sections 5 and 11, Article II of Republic Act No. 9165<sup>[1]</sup> (R.A. 9165), to wit:

#### **CRIMINAL CASE No. 6365**

That on or about the 28<sup>th</sup> day of August 2002 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another person one (1) heat-sealed plastic sachet of white crystalline substance weighing 0.08 gram which was found positive result (sic) to the screening and confirmatory test for Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>[2]</sup>

#### **CRIMINAL CASE No. 6366**

That on or about the 28<sup>th</sup> day of August 2002 in the Municipality of San Mateo, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and knowingly have in his possession and control white crystalline substance placed in twelve (12) heat sealed transparent plastic sachets with a total weight of 1.36 grams which were found positive to the test for Methamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.<sup>[3]</sup>

Appellant entered a negative plea to both charges.<sup>[4]</sup> The two cases were jointly heard. At the trial, the prosecution presented its lone witness, PO3 Juanito L. Tougan.

Tougan, who was assigned at the Intelligence Section of the San Mateo, Rizal Police Station, testified that at around 9:50 p.m. on 28 August 2002, he, together with

SPO1 Arellano and PO2 Pontilla received information from their civilian informant that a certain Badong Santos was selling illegal drugs. The police officers right away planned the arrest of herein appellant and they agreed that Tougan would act as a poseur-buyer. Together with the civilian informant, they headed to appellant's residence. There, Arellano and Pontilla positioned themselves more or less ten (10) meters away from the house where they could observe the impending transaction without being noticed. It was dark outside but the house was well-lit. Appellant opened the gate and upon seeing the civilian informant uttered, "*Pare.*" The civilian informant replied, "*Pare, kukuha kami ng panggamit.*" Tougan handed appellant the marked money worth P200.00 which bore Tougan's initials, "JLT." After taking the money, appellant went back inside the house and returned with a plastic sachet of *shabu*. Tougan got hold of the plastic sachet of *shabu*, held appellant's hand and introduced himself as a policeman. Tougan then directed appellant to empty his pockets of their contents. Tougan recovered the two (2) one hundred peso bills used as marked money and twelve (12) plastic sachets of *shabu* contained inside a white box. The police officers thereafter brought appellant to the police station. There, Tougan wrote his initials on all the thirteen (13) sachets of *shabu*. A document was prepared for these to be examined at the PNP Crime Laboratory. Tougan also stated that he had executed a sworn statement regarding the buy-bust incident.<sup>[5]</sup>

On cross-examination, Tougan stated that appellant had been included in a drug-watch list submitted by the barangay captain containing the names of drug pushers in the area. At the time of appellant's apprehension, however, the barangay captain had already discontinued submission of the said list to the police. Tougan was directed by the judge to bring to court the watch list he had talked about.<sup>[6]</sup>

At the next hearing, Tougan presented the watch list for the years 2000 and 2001. He explained that appellant was not included in the said list as the latter was then detained in the provincial jail for another criminal charge. He disclosed, however, that the latest watch list in possession of the police department was dated July 2003.<sup>[7]</sup>

As lone witness for the defense, appellant testified that at around 11:00 p.m. on 28 August 2002, he was at home fixing a fluorescent lamp. His wife and three children were there with him. Suddenly, they heard a sound coming from the gate. Appellant peeped through the window and saw policemen Tougan, Arellano and Pontilla. He was able to recognize them because he had served as their informer for almost three months. He went out of the house to greet them and in response, the policemen told him that they had been looking for him. They then held his hands and pushed him into the house. Tougan shoved him onto the sofa, and Arellano and Pontilla searched the house. Tougan frisked him and confiscated his money of P180.00. Meantime, Pontilla searched the table and got hold of a set of dart pins owned by appellant's son. Appellant asked the police officers why they came to his house and they replied that they had been harboring a grudge against him because he no longer wanted to serve as their informer. He saw Pontilla take a box out of his pocket and heard him say that it contained *shabu* and drug paraphernalia. He told Pontilla that if the box was his he would not have placed it on the table but instead hidden it from his children. Pontilla replied, "*tumigil ka diyan, tumahimik ka.*" At the time of the commotion, appellant stated that the members of his family stayed in another room and were very afraid. Pontilla told appellant's wife, "*ilabas mo na iyan*" to which she replied, "*Ano ang ilalabas ko? Pinerwisyo ninyo na nga kami.*"

Afterwards, appellant was handcuffed and dragged to the police station where he was detained at once without being informed of his rights.<sup>[8]</sup>

Appellant also testified that aside from being a police informer, he also worked as a tricycle driver. He likewise stated that he was applying for a job at the Office of the Provincial Prosecutor and that he had a recommendation from police officer Amatong. He denied being a drug pusher, as well as receiving the marked money. And while appellant believed that the evidence against him had been planted, he did not file a complaint against the police officers because nobody would attend to his complaint.<sup>[9]</sup>

On cross-examination, appellant stated that he volunteered to be a police informer and served as such from May to July 2002. During this period, he reported to the police officers four times and had acted three times as a poseur-buyer. He, however, decided to sever his ties with the police officers as the latter reneged on their promise to give him money each time a drug pusher was arrested. He also claimed that the police officers had him arrested in order to conceal the illegal acts they had committed during arrests, such as confiscating all the belongings and monies of the person arrested. But he admitted having been previously indicted in two (2) cases for selling and possessing *shabu*.<sup>[10]</sup> On re-direct examination, he revealed that he was released from imprisonment on 13 December 2001. Thereafter, he worked as a tricycle driver and applied for a job in the municipal government of San Mateo, Rizal.<sup>[11]</sup>

After trial, the trial court rendered a Decision<sup>[12]</sup> dated 17 November 2004 disposing as follows:

WHEREFORE, premises considered, accused **SALVADOR SANTOS Y SALVADOR** is hereby found **GUILTY** as charged beyond reasonable doubt and is hereby sentenced to Life Imprisonment and to pay a fine of **FIVE HUNDRED THOSAND** (sic) **(P500,000.00) PESOS** for Violation of Section 5, of R.A. 9165 and to suffer an imprisonment of **TWELVE (12) YEARS AND ONE DAY TO TWENTY YEARS (20)** and to pay a fine of **THREE HUNDRED THOUSAND (P300,000.00) PESOS** for violation of Section 11, of the same law.

SO ORDERED.<sup>[13]</sup>

Appellant elevated the judgment of conviction to the Court of Appeals. Before the Court of Appeals, he argued that the trial court erred: (1) in convicting him of the crimes charged despite the prosecution's failure to prove his guilt beyond reasonable doubt; and (2) in giving credence to the testimony of the prosecution witness.<sup>[14]</sup>

The Office of the Solicitor General (OSG), in lieu of an appellee's brief, filed a Manifestation and Motion for Acquittal.<sup>[15]</sup> It submitted that there existed reasonable doubt on the culpability of appellant as the identity of the *corpus delicti* was not sufficiently established and the testimony of the lone prosecution witness, Tougan, was of doubtful veracity.<sup>[16]</sup> It further maintained that should there be reservations regarding the innocence of appellant, the equipoise rule should apply.<sup>[17]</sup>

The Court of Appeals in a Decision<sup>[18]</sup> dated 31 July 2006 in CA G.R. CR-H.C. No. 01227 affirmed with modification the decision of the trial court. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed DECISION dated November 17, 2004 of the Regional Trial Court of San Mateo, Rizal, Branch 77 is hereby AFFIRMED with MODIFICATION in that the accused-appellant is hereby instead sentenced in Criminal Case No. 6366 to suffer an indeterminate prison term of eight (8) years and one (1) day of *prision mayor* to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*. Needless to add, the P300,000.00 fine STANDS.

The regulated drug subject of this case is hereby ordered confiscated and forfeited in favor of the Government to be disposed of in accordance with law.

With costs against the accused-appellant.

SO ORDERED.<sup>[19]</sup>

The Court of Appeals held that absent any arbitrariness or oversight in the appreciation of facts or circumstances of weight and substance, it would not disturb on appeal the trial court's evaluation of the credibility of witnesses. The Court of Appeals, moreover, stated that police officers involved in buy-bust operations are presumed to have performed their duties regularly. The fact that appellant's name was not actually found in the drug-watch list provided by Tougan did not constitute inconsistency nor did it render doubtful his entire testimony. The watch list was brought up by the prosecution only to highlight the fact that appellant was previously involved in the illegal peddling of drugs and that the buy-bust operation was prompted by reliable information.<sup>[20]</sup>

The Court of Appeals dismissed appellant's defense of frame-up as self-serving and uncorroborated. It ruled that the evidence on record supports his guilt beyond reasonable doubt.<sup>[21]</sup> The appellate court, however, modified the penalty imposed by the trial court in Criminal Case No. 6366. The appellate court reduced the prison term of twelve (12) years and one (1) day to twenty (20) years, imposed by the trial court, to an indeterminate prison term of eight (8) years and one (1) day of *prision mayor* to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal*. The fine of P300,000.00 stood.<sup>[22]</sup>

Appellant is now before the Court reiterating his previous submissions. Through his Manifestation (In Lieu of Supplementary Brief)<sup>[23]</sup> dated 13 April 2007, appellant stated that he had exhaustively argued all the relevant issues in his brief filed before the Court of Appeals. Thus, he manifested that he was adopting it as his supplemental brief. The OSG likewise manifested that it was no longer filing a supplemental brief.<sup>[24]</sup>

There is merit in the appeal.

The Constitution mandates that an accused shall be presumed innocent until the

contrary is proven beyond reasonable doubt. The prosecution has the burden to overcome such presumption of innocence by presenting the quantum of evidence required. Corollarily, the prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required quantum of evidence, the defense may logically not even present evidence on its own behalf. In which case, the presumption of innocence shall prevail and hence, the accused shall be acquitted. However, once the presumption of innocence is overcome, the defense bears the burden of evidence to show reasonable doubt as to the guilt of the accused. Reasonable doubt is that doubt engendered by an investigation of the whole proof and an inability after such investigation to let the mind rest each upon the certainty of guilt. Absolute certainty of guilt is not demanded by the law to convict a criminal charge, but moral certainty is required as to every proposition of proof requisite to constitute the offense.<sup>[25]</sup>

In the case at bar, the testimony for the prosecution and for the defense are diametrically opposed to each other. The prosecution's version of events solely consisted of Tougan's testimony regarding the buy-bust operation whereas appellant, who cried frame-up, was presented as the lone witness for the defense. In resolving such conflict, which involves the credibility of witnesses, the usual rule is for the Court to respect the findings of the trial court, it having had the opportunity to hear the witnesses themselves and to observe their deportment and manner of testifying during trial. Nonetheless, the rule admits of certain exceptions. Thus, the factual findings of the trial court may be reversed if, by the evidence or the lack of it, it appears that the trial court erred.<sup>[26]</sup>

The trial court decreed appellant's guilt as follows:

**His admission of knowing drug violators in San Mateo, only confirms the fact that he is one of them and his nefarious activities resulted to his several arrest and convictions in two (2) Courts of San Mateo, Rizal.**

**Accused, himself admitted he was arrested and convicted by RTC Branch 77 San Mateo, Rizal and records of this Court confirms this fact.** He averred, thus:

x x x

The two (2) drug cases previously filed with this Court, against the accused were Criminal cases nos. 3483-98 and 3484-98, which resulted to his convictions for possession and drug pushing and was sentenced to a jail term of two (2) years for each case. Two (2) more cases were filed against him with another Court, RTC. Br. 75 for violation of Section 16, R.A. 6425, as amended which also resulted to his convictions and a jail term of one (1) year for each case, docketed as Criminal Case Nos. 3711 and 3819.

Accused allegation (sic) that he was illegally arrested because the police harbored a grudge against him for refusing to continue to be their informer deserves scant consideration. The police has at their disposable several informants who can help them in gathering information in their area of jurisdiction. The loss of one (1) informant will not adversely affect