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THIRD DIVISION

[G.R. No. 124346, June 08, 2004]

YOLLY TEODOSIO Y BLANCAFLOR, PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

CORONA, J.:

Before us is a petition for review of the decision[1] dated February 28, 1995 of the Court of Appeals[2] affirming with modification the decision[3] dated January 18, 1993 of the Regional Trial Court (RTC) of Pasay City, Branch 109, convicting herein appellant Yolly Teodosio of violation of Section 15, Article III of RA 6425 (The Dangerous Drugs Act of 1972), as amended.

Appellant was charged with selling and delivering regulated drugs in an Information that read:

> That on or about the 6th day of August 1992, in Pasay City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused Yolly Teodosio Y Blancaflor, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to another Methamphetamine Hydrochloride (shabu), a regulated drug.
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> Contrary to law.[4]

During his arraignment on August 19, 1992, appellant pleaded not guilty.

The prosecution presented the following witnesses: SPO1 Jeffrey Inciong, SPO1 Emerson Norberte, Julita de Villa and Marita Sioson.

The evidence of the prosecution showed that, after four days of surveillance on the house of appellant, at around 8:00 p.m. on August 5, 1992, Chief Inspector Federico Laciste ordered a team from the PNP Regional Office Intelligence Unit to conduct a buy-bust operation on appellant who was suspected of peddling regulated drugs known as shabu (methamphetamine hydrochloride). The team was headed by SPO1 Emerson Norberte and composed of SPO1 Jeffrey Inciong, SPO3 Roberto Samoy, SPO3 Pablo Rebaldo and SPO1 Rolando Llanes.[5]

About midnight, the team and their informer proceeded to the appellant's house in Solitaria Street, Pasay City. SPO1 Jeffrey Inciong and the informer entered the open gate of appellant's compound and walked to his apartment while the rest of the team observed and waited outside. At 12:10 a.m., the informer introduced Inciong to the appellant as a shabu buyer. Appellant told them that a gram of shabu cost P600. When Inciong signified his intention to buy, appellant went inside his apartment while Inciong and the informer waited outside. A few minutes later,

appellant came out and said "*Swerte ka, mayroon pang dalawang natira* (You are lucky. There are two [grams] left)." When Inciong told appellant that he only needed one gram, the latter gave him one plastic packet. In turn, Inciong handed to appellant P600 or six pieces of P100 bills earlier treated with ultraviolet powder. After verifying the contents of the packet as shabu,[6] Inciong gave the signal to the other police officers who witnessed the transaction. After introducing himself as a police officer, Inciong, together with his companions, arrested appellant.[7]

The marked money bills,[8] the other packet of shabu[9] recovered from appellant's right front pants-pocket and the buy-bust shabu were brought to the PNP Crime Laboratory for examination by forensic chemists Julita de Villa and Marita Sioson. Appellant was also taken to the said laboratory to determine the presence of ultraviolet fluorescent powder. The results were positive in appellant's hands, the marked money bills and the right front pocket of his pants.[10] The buy-bust *shabu* and the contents of the other packet recovered from appellant were also confirmed to be methamphetamine hydrochloride.[11]

For his defense, appellant, a driver by profession, claims that police officers raided his house without a search or arrest warrant. When they found no drugs, they took a bag containing a large sum of money. To support his defense, the following witnesses were presented: the appellant himself, Ulysses Ramos (appellant's neighbor), Marilyn Teodosio (appellant's wife) and Paul Teodosio (appellant's 10-year-old son).

Appellant, Marilyn Teodosio and Paul Teodosio alleged that, on August 5, 1992, they were sleeping in their bedroom on the second floor of their apartment when they were suddenly awakened by a noise downstairs. Appellant went down and, while on the third step of the stairs, he met three policemen on their way up. Their guns were pointed at him. One of the three inquired from him where he kept his shabu but he denied having any. The three then searched appellant's room on the second floor but did not find any shabu. Instead, they took an overnight bag from a locked cabinet which they forcibly opened. The bag contained $7,260 and approximately P40,000 belonging to the appellant's niece who was scheduled for a heart operation. After appellant was arrested by six police officers, he was dragged, slapped and punched in the stomach. As he was being forcibly taken out of his apartment, SPO3 Samoy fired a gun near his ear. On their way to his detention cell in Bicutan, Taguig, his hands were handcuffed behind his back. Appellant felt and saw the police officers rubbing P100 bills on his hands.[12]

Defense witness Ulysses Ramos testified that, after the arrest of appellant, his wife called for police assistance. Two police officers responded while appellant's son Paul took pictures[13] of the broken door and their ransacked apartment. Thereafter, his wife and Marilyn Teodosio went to the police station and formally reported the incident.[14]

On January 18, 1993, the RTC rendered a decision, the dispositive portion of which read:

> IN VIEW OF ALL THE FOREGOING, the Court finds the accused Yolly Teodosio guilty beyond reasonable doubt for (sic) violation of Section 15,

Art. III of RA 6425 as amended and hereby sentences him to life imprisonment.

The methamphetamine hydrochloride is hereby forfeited in favor of the government and the Clerk of Court of this Branch is hereby ordered to transmit the same to the Dangerous Drugs Board thru the National Bureau of Investigation for proper disposition.

SO ORDERED.

Pasay City, January 18, 1993.[15]

In convicting appellant, the trial court relied on the credibility of the testimonies of the prosecution witnesses who were officers of the law without any ill-motive to testify falsely against him. In the absence of proof to the contrary, there was a presumption of regularity in the performance of their official functions. The trial court gave no credence to the claim that the police officers stole a bag containing a large sum of money, considering the failure of appellant's niece to file a case or even complain against the officers. Also, for the reason that they were biased witnesses, the trial court junked the claim of appellant's wife and son that the police officers illegally raided their apartment.

Ramos' testimony was given little weight because he did not actually see the police officers go in and out of the apartment. Furthermore, the trial court dismissed appellant's claim of a frame-up because this defense, like alibi, could be fabricated with facility and was therefore an inherently weak defense unless proven by clear and convincing evidence. The court also wondered how the appellant could have seen the officers rubbing money on his handcuffed hands behind his back. It also took note of the fact that the appellant, a driver by profession, attempted to cover up his ownership of the 190 square-meter lot and the three-door apartment thereon worth about P300,000.[16]

In view of the imposition of the penalty of life imprisonment, the appeal was originally brought to us. However, the Second Division of this Court ordered the transfer of this case to the Court of Appeals in accordance with our ruling in *People vs. Simon y Sunga* [17] wherein we held that RA 7659 which amended RA 6425, effective December 31, 1993, should be given retroactive application in so far as the amended and reduced imposable penalties provided therein are favorable to the appellant. Section 17 of RA 7659[18] states that the penalty shall range from prision *correccional* to *reclusion perpetua*, depending on the quantity of the drug. In the present case, the amount of shabu sold by appellant was only 0.73 gram, thus the penalty of *reclusion perpetua* could not be imposed. Such being the case, the appeal should have been filed in the Court of Appeals and not in this Court because we can only exercise exclusive appellate jurisdiction over criminal cases in which the penalty imposed is reclusion perpetua or higher.[19]

The Court of Appeals, in a decision dated February 28, 1995, affirmed the judgment of the trial court convicting the appellant but modified the penalty imposed, as follows:

> Finally, even as We agree on the findings of the lower court on the guilt of the appellant for a Violation of Section 15, Article III, Republic Act 6425, as amended, considering the application of Section 17 of RA 7659, the penalty imposed should be reduced to Ten (10) years of Prision Mayor, as minimum, to Twenty (20) Years of Reclusion Temporal, as maximum.
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> WHEREFORE, except for the modification of the penalty, as above indicated (sic), the appealed Decision is hereby AFFIRMED, in all other respects. No pronouncement as to costs.[20]

Agreeing with the factual findings of the trial court, the Court of Appeals gave more weight to the prosecution's claim that the entrapment operation in fact took place outside the appellant's apartment. The appellate court gave no merit to appellant's assertion that no warrant was secured despite four days of surveillance. It described as minor the appellant's observations of alleged inconsistencies in the prosecution's version of events.

Hence, this appeal based on the following assignment of errors:

> I
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> THE TRIAL COURT AND THE COURT OF APPEALS OVERLOOKED CERTAIN MATERIAL AND UNDISPUTED FACTS IN ERRONEOUSLY CONCLUDING THAT THE ALLEGED BUY-BUST OPERATION CONDUCTED WITHOUT A SEARCH WARRANT OR WARRANT OF ARREST TOOK PLACE OUTSIDE THE RESIDENCE OF THE PETITIONER.
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> II
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> BOTH THE TRIAL COURT AND THE COURT OF APPEALS ERRED AS A MATTER OF LAW AND THE CONSTITUTION IN ADMITTING THE PROSECUTION'S EVIDENCE WHICH WAS EITHER PROCURED FROM AN ILLEGAL WARRANTLESS RAID OR FABRICATED BY THE RAIDING POLICEMEN.
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> III
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> The lower court and the Court of Appeals erred in not finding that subjection of petitioner to ultra-violet powder test without assistance of counsel is violative of his constitutional right against self-incrimination.
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> IV
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> The Honorable Court of Appeals, sad to say, disregarded and ignored the inherent and natural bias and prejudice of the trial judge, her honor, Judge Lilia LopEz, against persons charged of (sic) drug offenses as duly noted by the Supreme Court in People vs. Sillo, 214 SCRA 74.
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> V
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> The accused is entitled to an acquittal based on reasonable doubt

because the evidence of the prosecution is not sufficient to warrant conviction. [21]

In short, appellant insists that the police officers forcibly entered and searched his house without a warrant. When they did not find any regulated drug, they instead took a bag containing a large sum of money. They also showed their brutality by slapping him and punching him in the stomach. Thereafter, they framed up appellant by wiping ultraviolet powder on his palms.

We affirm appellant's conviction.

Well-settled is the rule that findings of trial courts which are factual in nature and which involve the credibility of witnesses are to be respected when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gleaned from such findings.[22] Such findings carry even more weight if they are affirmed by the Court of Appeals, as in the case at bar. The alleged flaws pointed out by appellant are not enough for us to reverse the factual findings of the courts a quo.

The police officers were clear and categorical in their narration of how the entrapment operation was conducted. SPO1 Inciong, acting as a poseur-buyer, was introduced by the informer to appellant in front of the latter's apartment. Thereafter, appellant went inside his apartment and came back with two packets of shabu. Inciong handed to appellant six pieces of P100 bills treated with ultra-violet powder in exchange for one packet of shabu. Immediately after, Inciong gave the signal to the other policemen who then entered the compound and effected appellant's arrest. Recovered from appellant was the other packet of shabu and the six pieces of marked money. The tests conducted on these pieces of evidence, appellant's hands and right front pants-pocket showed that appellant was the same person who sold the drugs to police officer Inciong. There was strong evidence therefore, certainly beyond reasonable doubt, that appellant was engaged in drug-dealing.

The elements of the crime were duly proven. In the prosecution of the offense of illegal sale of prohibited drugs, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[23]

On the other hand, appellant insists he was framed up for possession of shabu after the search in his apartment produced no illegal drugs. Frame-up, a usual defense of those accused in drug-related cases, is viewed by the Court with disfavor since it is an allegation that can be made with ease. For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that the arresting policemen performed their duties in a regular and proper manner.[24]

However, appellant was unable to prove he was the victim of a frame up. First, appellant failed to show any motive why the police officers would illegally raid his house. Thus, the presumption of regularity in the performance of official duty by the persons in authority was never overcome. Second, if indeed they broke into his apartment and took an overnight bag containing a hefty amount, appellant or any of his family members should have filed a criminal complaint against the supposed malefactors but they did not. This weakened the defense's story that the police