

FIRST DIVISION

[CA-G.R.CR H.C. NO. 01159, August 18, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FRANCISCO PASCUAL BAUTISTA, ACCUSED-APPELLANT.**

D E C I S I O N

ROXAS, J.:

Legal Principles in this Case:

Accused's denial and claim of a frame-up cannot prevail over the positive testimonies of the prosecution witnesses. Like alibi, frame-up is a defense that can easily be concocted, which is commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act and there will be disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the policemen's alleged rotten reputation, will accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exist, so that, credence is given to prosecution witnesses who are police officers, in the absence of proof of any odious intent on the part of the police authorities to falsely impute a serious crime, for they are presumed to have performed their duties in a regular manner.

The Case

Acting on the report of a concerned parent of a minor who is suspected of being a drug-addict, a buy-bust team was formed by the PNP using the minor as the poseur buyer. Upon reaching the target area, the poseur buyer negotiated with the accused for the purchase of a sachet of shabu. As soon as there was an exchange of shabu and money, the poseur buyer, as rehearsed, signaled the PNP, who immediately made the arrest. The sachet was sent to the PNP laboratory which confirmed that it contained the substance called shabu. An information for drug pushing was filed against the accused. The accused pleaded not guilty and raised the defenses of denial and frame-up. The Regional Trial Court convicted the accused. The accused interposed this appeal.

The Facts

This is an appeal^[1] under Rule 122 of the Revised Rules of Court, assailing the June 6, 2005 Decision of the Regional Trial Court (RTC) of Calamba City, Branch 36, in Criminal Case No. 11498-03-C, filed by accused-appellant Francisco Pascual Bautista (BAUTISTA) that found him guilty beyond reasonable doubt of having violated Section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002.

On October 5, 2003, mother of "Fred", a minor who was disclosed by the mother as

an addict, went to the police station of Los Baños, Laguna, and informed Police Inspector Nestor Balba Dela Cruz (P/I DELA CRUZ) about the rampant drug selling activities of the accused-appellant BAUTISTA in Barangay Bayog, Los Baños, Laguna.

On the strength of this information, P/I DELA CRUZ ordered PO1 Hose Platon and PO1 TOBIAS (PO1 TOBIAS) to handle the matter. Consequently, a buy-bust operation was set up.

The buy-bust team was composed of PO1 TOBIAS as leader, to be assisted by Barangay Tanods Alfredo Munding (MUNDIN) and Nonilon Celestra (CELESTRA) as his companions. The mother of the minor volunteered her son to act as a poseur buyer. PO1 TOBIAS prepared the buy-bust money handed to him by P/I DELA CRUZ by marking the two (2) one hundred (Php 100) peso bills^[2] with serial numbers DU 806809 and GR 19151. Thereafter, PO1 TOBIAS instructed the poseur-buyer to buy shabu from the appellant using the buy-bust money. The team, together with the poseur buyer, went to the place appointed by the latter.

Upon arrival at the target area, the members of the raiding team positioned themselves strategically around six (6) to seven (7) meters away from the house of the accused-appellant BAUTISTA, where they could see the progress of the transaction.

Meanwhile, the designated poseur-buyer proceeded to the house of the accused-appellant BAUTISTA, and situated himself at a spot that was illuminated by an electric post lighting. Thereat, the poseur buyer called the accused-appellant BAUTISTA by name. The accused-appellant BAUTISTA went out of his house and conversed for a while with the poseur buyer. The poseur buyer then gave the Php 200.00 buy-bust money and the accused-appellant BAUTISTA handed to the designated poseur buyer a plastic sachet containing white crystalline substance. After the exchange of the shabu for the money, the designated poseur buyer raised his hand, which was the pre-arranged signal that the exchange had been made. Immediately, the members of the raiding team rushed to arrest accused-appellant BAUTISTA who quickly ran inside his house when he saw people running towards him and the buy-bust team pursued him into the house where accused-appellant BAUTISTA was arrested.

During the arrest, the accused-appellant BAUTISTA was apprised of his constitutional rights. The marked money was retrieved from the accused-appellant BAUTISTA while the poseur buyer handed to PO1 TOBIAS the plastic sachet of suspected shabu he had bought from the accused-appellant BAUTISTA. Likewise, the marked-money and the confiscated sachet of suspected shabu were brought to the police station and turned over to the duty investigator in the person of PO3 Gallaco. PO3 Gallaco marked the confiscated substance with "FPB" in the presence of PO1 TOBIAS. Thereafter, the marked specimen together with the request for laboratory examination were brought to the police crime laboratory of Calamba City and subjected to examination. Police Inspector Jupri C. Delantar, a Forensic Chemist who conducted the laboratory examination, reduced his findings into writing under Chemistry Report No. D-2407-03^[3]. The report showed that the substance was positive for methamphetamine hydrochloride or "shabu".

Consequently, on October 8, 2003, an Information^[4] for violation of Section 5 of Republic Act No. 9165 was filed against the accused-appellant BAUTISTA, that reads as follows:

That at round 8:45 o'clock in the evening of October 5, 2003 at Brgy. Bayog, Municipality of Los Baños, Province of Laguna and within the jurisdiction of the Honorable Court, the above-named accused and without any authority of law, did then and there, willfully, unlawfully, and feloniously sell and deliver to a poseur buyer one (1) plastic sachet containing methamphetamine hydrochloride otherwise known as "shabu", a dangerous drug, with a total weight of 0.03 grams, in violation to the aforementioned provision of law.

Contrary to law.

On June 7, 2004, the accused-appellant BAUTISTA was arraigned^[5], and he pleaded "not guilty" to the crime charged. Thereafter, trial on the merits ensued.

Assailed Decision of the RTC

On June 6, 2005, the Regional Trial Court of Calamba City, Branch 36, rendered a Decision^[6] in Criminal Case No. 11498-03-C, finding the accused-appellant BAUTISTA guilty of having violated section 5, Article II of the Comprehensive Dangerous Drugs Act of 2002, the dispositive portion of which reads as follows:

WHEREFORE, Court finds Accused Francisco L. Bautista GUILTY beyond reasonable doubt of the crime of selling "shabu" under violation of section 5, Article II of Republic Act No. 9165. the accused is sentenced to suffer the penalty of *reclusion perpetua* and pay a fine of Five Hundred Thousand (P500,000.00) Pesos.

The Branch Clerk of Court shall, in accordance with law, forward the seized "shabu" in this case to the Philippine Drug Enforcement Agency for destruction.

SO ORDERED.

The accused-appellant BAUTISTA filed his Notice of Appeal^[7] on June 10, 2005.

Assignment of Errors

In assailing the Decision of the RTC, the accused-appellant BAUTISTA assigned the following errors:

- I. THE COURT GRAVELY ERRED IN APPRECIATING THE MANNER BY WHICH THE POLICE OFFICER OF LOS BANOS, LAGUNA CONDUCTED THE BUY BUST OPERATION AND IN GIVING WIGHT AND CREDENCE TO THE TESTIMONY OF POLICE OFFICER JOSE PO1 TOBIAS CONTRARY TO THE RIGHTS OF THE ACCUSED UNDER THE CONSTITUTION;
- II. THE COURT GRAVELY ERRED IN NOT UPHOLDING THE CONSTITUTIONAL RIGHTS OF THE ACCUSED AND TO BE APPRISED OF THE SAME AT THE TIME