

## SECOND DIVISION

[ G.R. No. 184546, February 22, 2010 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WILSON SUAN Y JOLONGON, APPELLANT.**

### D E C I S I O N

#### **DEL CASTILLO, J.:**

Once again we find occasion to reiterate the most echoed constitutional guarantee that an accused in criminal prosecutions is presumed innocent until his guilt is proven beyond reasonable doubt.<sup>[1]</sup> To overcome the presumption of innocence and arrive at a finding of guilt, the prosecution is duty bound to establish with moral certainty the elemental acts constituting the offense. In prosecutions involving narcotics, the narcotic substance itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.<sup>[2]</sup> The identity of the narcotic substance must therefore be established beyond reasonable doubt.<sup>[3]</sup>

We are compelled to acquit appellant in this case because the prosecution miserably failed to establish the identity of the substance allegedly seized from him. In addition, we find that there was a break in the chain of custody thereby casting doubt on the integrity and evidentiary value of the substance allegedly seized from the appellant.

This is an appeal from the Decision<sup>[4]</sup> dated March 25, 2008 of the Court of Appeals (CA) in CA-G.R. CR No. 00054. The CA affirmed *in toto* the Decision<sup>[5]</sup> dated November 17, 2004 of the Regional Trial Court (RTC) of Lanao del Norte, Branch 01, Iligan City finding appellant Wilson Suan y Jolongon guilty of violation of Section 11, Article II of Republic Act (RA) No. 9165, the Comprehensive Dangerous Drugs Act of 2002.

#### ***Factual Antecedents***

On August 12, 2003, an Information was filed with the RTC of Lanao del Norte, Branch 6 against appellant for violation of Section 5, Article II of RA 9165. The case was docketed as Criminal Case No. 10315. Subsequent to his arraignment on September 6, 2003 wherein he pleaded not guilty and before the pre-trial, appellant filed an Urgent Motion for Re-Investigation<sup>[6]</sup> which the trial court granted on September 19, 2003.<sup>[7]</sup> As a result of the re-investigation, an Amended Information<sup>[8]</sup> was filed charging appellant with violation of Section 11, Article II of RA 9165. The accusatory portion of the Amended Information reads:

The undersigned Prosecutor III of Iligan City accuses WILSON SUAN y Jolongon for VIOLATION OF REPUBLIC ACT NO. 9165, committed as follows:

That on or about August 12, 2003, in the City of Iligan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control one (1) sachet of methamphetamine hydrochloride, a dangerous drug commonly known as shabu, weighing more or less 0.01 gram.

Contrary to and in violation of Republic Act No. 9165, Article II, Section 11, thereof.

City of Iligan, October 13, 2003.

The Amended Information was raffled to Branch 01 wherein appellant was arraigned and to which offense he pleaded not guilty.

The evidence for the prosecution, as culled from the testimonies of PO2 Allan Labasano (PO2 Labasano), PO1 Samsodim Gondol (PO1 Gondol),<sup>[9]</sup> and Forensic Chemist Police Senior Inspector April Carvajal<sup>[10]</sup> (Forensic Chemist Carvajal), is as follows:

On August 12, 2003 at about 3:30 a.m., PO2 Labasano and PO1 Gondol conducted a buy-bust operation at Purok 4, Saray, Iligan City. PO1 Gondol, who was provided with two pieces of P50.00<sup>[11]</sup> bills, acted as the buyer while PO2 Labasano served as back-up. Upon reaching the target area, the two saw appellant sitting outside the house. PO1 Gondol approached appellant and the latter asked the former if he wanted to buy a narcotic substance. PO1 Gondol replied "I will buy "Piso", meaning P100.00. After a brief exchange of the money and the stuff, appellant was informed of his constitutional rights and thereafter was arrested. Appellant was brought to the police headquarters and presented before the investigator. At the police headquarters, PO2 Labasano prepared a Certificate of Inventory. The buy-bust money and the plastic sachet containing the stuff they recovered were turned over to the evidence custodian as related by PO1 Gondol, and to the Team Leader, as testified to by PO2 Labasano. Upon request, the plastic sachet was sent to the PNP Regional Crime Laboratory for examination.<sup>[12]</sup>

Forensic Chemist Carvajal received the written request for laboratory examination of one sachet containing white crystalline substance submitted to their office.<sup>[13]</sup> She conducted the test and the result showed that it contained methamphetamine hydrochloride or *shabu*, a dangerous drug. She then prepared Chemistry Report No. D-500-2003<sup>[14]</sup> on her finding on the tests.

Appellant denied the charge against him. He claimed that while he was sleeping on a bench beside the road, PO2 Labasano suddenly held his arm and handcuffed him. PO2 Labasano inserted his hand into appellant's pocket, frisked him and *shabu* was

later shown to him. He was brought to Tipanoy for a drug test and detained in jail for violation of the anti-drugs law.

### ***Ruling of the Regional Trial Court***

Giving full faith and credence to the prosecution's version, the trial court found the test-buy and buy-bust operation established. In its Decision dated November 17, 2004, the trial court found appellant guilty beyond reasonable doubt of the crime charged and disposed as follows:

WHEREFORE, premises considered, the Court find[s] the guilt of the accused WILSON SUAN y JOLONGON beyond reasonable doubt of the crime charged against him in the information and hereby sentences him to suffer the penalty of imprisonment from 12 years and 1 day to 20 years and to pay a fine of P100,000.00.

The shabu taken from him is hereby confiscated in favor of the government.

SO ORDERED.<sup>[15]</sup>

### ***Ruling of the Court of Appeals***

Appellant appealed the trial court's Decision to the CA. Finding no error

committed by the trial court in convicting appellant of the offense of illegal possession of dangerous drug, the CA affirmed the trial court's decision.

Undaunted, appellant seeks a final recourse before this Court *via* the instant appeal.

In the Resolution dated November 24, 2008, we accepted the appeal and notified the parties that they may file their respective supplemental briefs if they so desire. However, both parties manifested that they are adopting their respective briefs earlier submitted with the CA.

In support of his prayer for a reversal of the verdict of his conviction, appellant contends: a) that the testimonies of the police operatives contained material inconsistencies and contradictions as to (i) whether a surveillance was made prior to the buy-bust operation, (ii) whether there was marked money used in the operation, and, (iii) the amount of the *shabu* sold; b) there was no proper identification of the illegal drug; c) the prosecution witnesses failed to testify on matters regarding the possession of the illegal drug; and, d) the defense of alibi was not properly appreciated.

### ***Our Ruling***

The appeal is meritorious.

*The inconsistencies in the testimonies of the police operatives as regards prior surveillance*

*and use of marked money are immaterial.*

While it may be conceded that there are a number of inconsistencies in the testimonies of the prosecution's principal witnesses as alluded to above, they are not, in our view, substantial enough to impair the veracity of the prosecution's evidence that a buy-bust operation resulting in the arrest of appellant, was indeed conducted. The maxim *falsus in unus, falsus in omnibus* does not lay down a categorical test of credibility. While witnesses may differ in their recollection of an incident, it does not necessarily follow from their disagreements that both or all of them are not credible and their testimonies completely discarded as worthless.

A prior surveillance much less a lengthy one, is not necessary during an entrapment as in the case at bench. To be sure, there is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers. In this case, the buy-bust operation was set up precisely to test the veracity of the informant's tip and to arrest the malefactor if the report proved to be true. Thus in one case<sup>[16]</sup> we emphasized our refusal to establish on a *a priori* basis what detailed acts the police authorities might credibly undertake in their entrapment operations.

The doubt cast by the appellant on whether marked money was used in the operation did not in any way shatter the factuality of the transaction. Neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation.<sup>[17]</sup> Much less is it required that the money be marked. In fact, not even the absence or non-presentation of the marked money would weaken the evidence for the prosecution.<sup>[18]</sup> The elements necessary to show that the crime had indeed been committed are proof that the illicit transaction took place coupled with the presentation in court of the *corpus delicti* or the illicit drug.<sup>[19]</sup>

It is a fundamental rule that the trial court's findings that are factual in nature and that involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary and unsupported conclusions can be gathered from such findings.<sup>[20]</sup> The rule finds an even more stringent application where said findings are sustained by the CA.<sup>[21]</sup> However, this rule will not apply in this case. As will be discussed shortly, the courts below overlooked two significant and substantial facts which if considered, as we do now consider, will affect the outcome of the case.

*The prosecution failed to establish beyond reasonable doubt the identity of the substance recovered from the appellant*

The main issue in the case at bench is whether the prosecution witnesses were able to properly identify the dangerous drug taken from appellant. For while the drug may be admitted in evidence it does not necessarily follow that the same should be given evidentiary weight. It must be stressed that admissibility should not be equated with its probative value in proving the *corpus delicti*.

Appellant submits that the *shabu* alleged to have been sold was not properly identified by the police officers thus rendering doubtful and open to suspicion if the *shabu* submitted for examination is indeed the same substance sold by him.

We agree. As we have stated at the outset, the prosecution miserably failed to establish the identity of the substance allegedly recovered from the appellant. Records show that while the police officers were able to prove the factuality of the buy-bust operation, the prosecution dismally failed to prove the identity of the substance taken from appellant.

The Certificate of Inventory<sup>[22]</sup> prepared by PO2 Labasano merely stated that a sachet of a substance weighing 0.01 gram was seized from the appellant. PO2 Labasano made no mention that he placed some markings on the sachet for purposes of future identification. Thus:

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that an inventory was conducted in connection with the following operation:

Persons Arrested : Wilson Suan Y Jolongon  
Date/Time of Arrest : 3:30 AM of 12 August 2003  
Place of Arrest : Purok 4, Barangay Saray, Iligan City

This is to certify further that the following items were seized during the said operation:

**One<sup>[1]</sup> sachet of suspected shabu weighing more or less .01 gram**

Two<sup>[2]</sup> pieces Php 50.00 peso bill - marked money

x x x x (Emphasis supplied)

However, we find it rather odd that in the Request for Laboratory Examination/Urine Test<sup>[23]</sup> prepared by Police Chief Inspector Jesus Atchico Rebuta and addressed to the Provincial Chief of Police, Lanao del Norte, the item allegedly seized from the appellant was already marked as **Exhibit "A"**. Thus:

x x x x

2. Request the conduct of laboratory examination of evidence to determine the presence of Dangerous Drugs or controlled precursors and essential chemicals:

EXHIBITS

**Exh. one small heat-sealed, plastic transparent sachet "A" containing white crystalline granules suspected to be shabu weighing more or less 0.01 grams marked as Exh. "A" placed in a stapled transparent plastic bag.**

x x x x (Emphasis supplied)