

## FIRST DIVISION

[ G.R. No. 171980, October 06, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OLIVE RUBIO MAMARIL, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

For review through this appeal<sup>[1]</sup> is the Decision<sup>[2]</sup> dated 31 August 2005 of the Court of Appeals in CA-G.R. CR. No. 28482 which affirmed the conviction of herein accused-appellant OLIVE RUBIO MAMARIL of possession of dangerous drugs in violation of Section 11, Article II<sup>[3]</sup> of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The dispositive portion of the assailed decision reads:

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The challenged judgment of the court *a quo* is hereby **AFFIRMED**.<sup>[4]</sup>

The affirmed disposition reads:

WHEREFORE, upon proof of guilt beyond reasonable doubt, this court sentences accused Olive Rubio Mamaril to suffer an indeterminate prison term of twelve (12) years and one (1) day as minimum to twenty (20) years as maximum and a fine of P300,000 for violation of Section 11, Article II, of R.A. 9165<sup>[5]</sup>.

The facts as presented by the prosecution before the appellate court follow:

On 25 March 2003, at 9:30 o'clock in the evening, SPO4 Alexis Gotidoc, along with the members of Intel Operatives of Tarlac City Police Station and Philippine Drug Enforcement Agency (PDEA), implemented Search Warrant No. 144C dated 18 March 2003 issued by Judge Alipio Yumul of Branch 66, Regional Trial Court, Capas, Tarlac against the appellant in her residence at Zone 1, *Barangay* Maliwalo, Tarlac City, Province of Tarlac.<sup>[6]</sup>

Prior to the search, the police team invited *Barangay Kagawad* Oscar Tabamo of *Barangay* Maliwalo to witness the conduct of the search and seizure operation in the appellant's house. With *Barangay Kagawad* Tabamo, the police team presented the search warrant to appellant and informed her of the purpose of the search and her constitutional rights.<sup>[7]</sup>

Afterwards, SPO4 Gotidoc, the designated searcher, started searching the appellant's house, in the presence of the appellant and *Kagawad* Tabamo. During his search, he found on the top cover of the refrigerator one (1) plastic sachet containing white crystalline substance. Thereafter he prepared a Certificate of Good Search and Confiscation Receipt which the appellant refused to sign.<sup>[8]</sup>

The plastic sachet was brought to the Tarlac Provincial Crime Laboratory located at Tarlac Provincial Hospital for qualitative examination. The examination conducted by Engr. Marcene G. Agala, the Forensic Chemist who tested the white crystalline substance, yielded positive results for 0.055 gram of Methamphetamine Hydrochloride, commonly known as *shabu*, a dangerous drug.<sup>[9]</sup>

The factual version presented by the defense is:

On 25 March 2003, at 9:30 o'clock in the evening the police officers arrived at appellant's house and showed her a search warrant. Thereafter, the policemen searched her house but found nothing. Then a certain Police Officer Pangilinan asked her where she was sleeping. When she replied that she was inside the hut, the police officers proceeded to and searched the place and found the plastic sachet containing the *shabu*.<sup>[10]</sup>

Thereafter, she was brought to the sub-station at Maliwalo and was told, particularly by SPO4 Gotidoc and a certain Ma'am Dulay that in exchange of P20,000.00, no case would be filed against her. When she told them that she did not have money, she was detained.<sup>[11]</sup> However, on cross-examination, the appellant admitted that the alleged extortion of P20,000.00 was not reported to the higher ranking police officers.<sup>[12]</sup>

Appellant claims that the police officers framed her up and planted the *shabu* inside her house because of her refusal to give them money.<sup>[13]</sup>

Eventually, an Information was filed against the appellant which reads:

That on March 25, 2003 at around 9:30 o'clock in the evening at Tarlac City and within the jurisdiction of this Honorable Court, accused, did then and there willfully, unlawfully and criminally have in her possession and control Methamphetamine Hydrochloride known as *Shabu*, a dangerous drug, weighing more or less 0.055 gram, without being authorized by law.

CONTRARY TO LAW<sup>[14]</sup>

Upon arraignment, the appellant, assisted by the de-officio counsel, entered a plea of not guilty.

On 21 April 2004, the trial court found the accused-appellant guilty of violation of Section 11, Article II, of R.A. 9165.<sup>[15]</sup>

On appeal, the Court of Appeals ruled that the evidence for the prosecution fully

proved beyond reasonable doubt the elements necessary to successfully prosecute a case for illegal possession of a regulated drug, namely, (a) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug, (b) such possession is not authorized by law and (c) the accused freely and consciously possessed said drug.<sup>[16]</sup>

Centered on the conduct of the search of appellant's house that yielded the prohibited substance, the Court of Appeals upheld the trial court on the finding that "after a careful evaluation and analysis of the arguments presented by the prosecution and the defense, we hold that the search conducted by the INTEL Operatives of Tarlac City Police Station, in coordination with the PDEA, on the residence of the accused-appellant on 25 March 2003 at Zone 1, *Barangay* Maliwalo, Tarlac City and the seizure therein of one (1) plastic pack of white crystalline substance of methamphetamine hydrochloride or "*shabu*" weighing 0.055 gram are legal. As a consequence of the legal search, the said methamphetamine hydrochloride or "*shabu*" seized on the occasion thereof, is admissible in evidence against the accused-appellant."<sup>[17]</sup>

In this appeal, accused-appellant, through her new counsel from the Public Attorney's Office, goes further back, presenting new arguments, that (1) the search warrant was not based on probable cause, hence, the evidence allegedly obtained through it may not be admitted to support the accused-appellant's conviction,<sup>[18]</sup> and (2) the presumption of regularity in the performance of official functions by public officers cannot prevail over the presumption of innocence.<sup>[19]</sup>

We first deal with the original position of the accused which, in this petition, begins with the contention of non-compliance with all the requisites of illegal possession of dangerous drugs. We agree with the rulings of the trial court and the Court of Appeals that there was indeed full satisfaction of the requisites for the conviction of the accused.

The trial court found that the evidence presented by the prosecution was not adequately defeated. Re-stating that in illegal possession of prohibited drugs, there are only three (3) elements to secure conviction: (1) accused is in possession of the prohibited drugs; (2) such possession is not authorized by law; and (3) accused consciously and freely possessed the prohibited drugs,<sup>[20]</sup> the trial court held that all these were established beyond doubt. It determined that appellant failed to proffer evidence enough to discredit the prosecution and render doubtful his guilt.<sup>[21]</sup>

The Court of Appeals found no reason to overturn the finding of the trial court. It held that:

After a careful evaluation and analysis of the arguments presented by the prosecution and the defense, we hold that the search by the INTEL Operatives of Tarlac City Police Station, in coordination with the PDEA, on the residence of the accused-appellant on March 25, 2003 at Zone 1, *Barangay* Maliwalo, Tarlac City and the seizure therein of one (1) plastic pack of white crystalline substance of methamphetamine hydrochloride or "*shabu*" weighing 0.055 gram are legal. As a consequence of the legal

search, the said methamphetamine hydrochloride or "*shabu*" seized on the occasion thereof, is admissible in evidence against the accused-appellant.<sup>[22]</sup>

We will not reverse this holding. The repeated contentions of frame-up of the accused-appellant<sup>[23]</sup> and that the dangerous drug of methamphetamine hydrochloride was planted by the police officers do not deserve further considerations by this Court. While We are aware that in some cases, law enforcers resort to the practice of planting evidence in order that to, *inter alia*, harass, nevertheless the defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the police officers performed their duties regularly and that they acted within the bounds of their authority.<sup>[24]</sup>

Frame-up, like alibi, is generally viewed with caution by the Court because it is easy to contrive and difficult to disprove. It is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.<sup>[25]</sup> And so is the likewise repeated referral to the primacy of the constitutional presumption of innocence over the presumption of regularity in the performance of public functions,<sup>[26]</sup> the contention being that the frame-up argument is supported by the constitutional presumption of innocence.

The argument is without merit.

Indeed it is a constitutional mandate<sup>[27]</sup> that in all criminal prosecutions, **the accused shall be presumed innocent until the contrary is proved** and that on the other hand, it is in the Rules of Court<sup>[28]</sup> that. -

"The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

"xxx

**"m. That official duty has been regularly performed;**  
(Emphasis supplied)

xxx"

In the case at hand, the so-called frame-up was virtually pure allegation bereft of credible proof. The narration<sup>[29]</sup> of the police officer who implemented the search warrant, was found after trial and appellate review as the true story. It is on firmer ground than the self-serving statement of the accused-appellant of frame-up.<sup>[30]</sup> The defense cannot solely rely upon the constitutional presumption of innocence for, while it is constitutional, the presumption is not conclusive. Notably, the accused-appellant herself stated in her brief that<sup>[31]</sup> "no proof was proffered by the accused-appellant of the police officers' alleged ill motive."

Stated otherwise, the narration of the incident by law enforcers, buttressed by the presumption that they have regularly performed their duties in the absence of