

## THIRD DIVISION

[ G.R. No. 179941, August 24, 2009 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LITO  
MACABARE Y LOPEZ, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

This is an appeal from the June 26, 2007 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00661 entitled *People of the Philippines v. Lito Macabare y Lopez*, which affirmed the Decision of Branch 35 of the Regional Trial Court (RTC) in Manila in Criminal Case No. 01-191383 finding accused-appellant Lito Macabare guilty of violation of Section 16 of Republic Act No. (RA) 6425 or *The Dangerous Drugs Act of 1972*.

#### The Facts

The Information filed against Macabare reads:

That on or about January 18, 2001, in the City of Manila, Philippines, the said accused, without being authorized by law to possess or use [any] regulated drug, did then and there willfully, unlawfully and knowingly have in his possession and under his custody and control one (1) transparent plastic bag containing FOUR HUNDRED TEN POINT SIX (410.6) grams of white crystalline substance known as "shabu" containing methamphetamine hydrochloride, a regulated drug, without the corresponding license or prescription thereof.

Contrary to law.<sup>[1]</sup>

Upon his arraignment, Macabare gave a not guilty plea. Trial ensued and the prosecution presented Senior Jail Officer II (SJO2) Arnel V. Sarino and Forensic Chemist Emilia Andeo-Rosales as witnesses. The defense presented Macabare as lone witness.

#### Version According to the Prosecution

Macabare, a detention prisoner charged with kidnapping, had been at the Manila City Jail since 1995. He was assigned to Cell No. 2 which sheltered 200 inmates. The cell was further divided into 30 cubicles or *kubols*. Each *kubol* had its own sliding door and improvised locks.<sup>[2]</sup>

On January 18, 2001, between 11 and 12 o'clock in the evening, Inspector Alvin

Gavan received a confidential report that *shabu* had been smuggled into the Manila City Jail and hidden in Cell No. 2. A team was thus sent to inspect all the *kubols* in the said cell. All the inmates were ordered to line up outside while the inspection was being conducted. SJO2 Sarino reached Macabare's *kubol*. He was the lone occupant. A Coleman cooler was found in the *kubol* and it had a folded towel on top. When SJO2 Sarino spread out the towel he found a plastic bag inside which contained a white crystalline substance. The team suspected the substance to be *shabu* and then brought Macabare to the office for further investigation.<sup>[3]</sup>

City Jail Warden Macumrang Depantar sent the suspected *shabu* to the National Bureau of Investigation laboratory through his authorized personnel. The seized white crystalline substance was later confirmed to be *shabu* or methylamphetamine hydrochloride.<sup>[4]</sup>

### **Version of the Defense**

Macabare denied ownership or knowledge of the confiscated *shabu*. He testified that he was strolling outside his *kubol* close to midnight on January 18, 2001 when some jail personnel came and instructed all the inmates of Cell No. 2 to get out of bed and go outside. A short while later, SJO2 Sarino discovered a packet of *shabu* near Macabare's chair. Macabare was, thus, forcibly brought to the office for investigation. He denied owning the contraband and averred that a lot of inmates slept at his *kubol* at will.<sup>[5]</sup>

### **The Ruling of the Trial Court**

On November 16, 2001, the trial court rendered judgment against Macabare. It found that the prosecution offered sufficient circumstantial evidence to sustain a finding of guilt beyond reasonable doubt. The trial court noted that Macabare's unconfirmed defense of alibi was weak and could not outweigh the positive probative value of the prosecution's evidence. The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is rendered pronouncing accused LITO MACABARE y LOPEZ guilty beyond reasonable doubt of possession of 410.60 grams of methylamphetamine hydrochloride without license or prescription therefor, and sentencing said accused to reclusion perpetua and to pay a fine of P5,000,000.00 plus the costs.

x x x x

SO ORDERED.

Macabare appealed the RTC Decision to this Court. We, however, transferred his appeal to the CA pursuant to *People v. Mateo*.<sup>[6]</sup>

Before the CA, Macabare argued that it was error on the trial court's part to have found him guilty on the basis of mere circumstantial evidence.

## **The Ruling of the CA**

On June 26, 2007, the CA affirmed the RTC Decision with a modification on Macabare's pecuniary liability. It ruled that the circumstances provided by the prosecution satisfied the requirements found in the Rules on Evidence and proved the elements of the offense of possession of illegal drugs. Moreover, the appellate court agreed with the RTC's finding that credence should be given to the straightforward and consistent testimonies of the prosecution witnesses rather than Macabare's bare denial. It likewise observed that the police officers who testified were not shown to have been moved by some improper motive against Macabare. The fine imposed on Macabare was reduced considering that he was a detention prisoner and the quantity of the *shabu* confiscated from him.

The CA disposed of the case as follows:

WHEREFORE, in view of the foregoing premises, We resolve to DISMISS the appeal and AFFIRM the Decision dated November 16, 2001 of the RTC in Manila with the modification that the fine imposed is reduced from P5,000.000.00 to P500,000.00.

IT IS SO ORDERED.<sup>[7]</sup>

On July 18, 2007, Macabare filed a Notice of Appeal notifying the CA that he was appealing his conviction before this Court.

On January 23, 2008, this Court required the parties to submit supplemental briefs if they so desired. The People, through the Office of the Solicitor General (OSG), manifested its willingness to submit the case on the basis of the records already submitted. Macabare, on the other hand, raised and reiterated his arguments for his acquittal in his Supplemental Brief.<sup>[8]</sup>

## **The Issues**

### **I**

WHETHER THE SET OF CIRCUMSTANTIAL EVIDENCE ESTABLISHED BY THE PROSECUTION IS INSUFFICIENT TO PRODUCE A CONVICTION, BEYOND REASONABLE DOUBT, THAT THE DRUGS FOUND IN THE KUBOL OF ACCUSED-APPELLANT WERE HIS;

### **II**

WHETHER THE ACCUSED-APPELLANT'S PRESUMPTION OF INNOCENCE SHOULD PREVAIL OVER THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS BY PUBLIC OFFICERS.

In his appeal, Macabare disputes the finding that the 410.6 grams of *shabu* found in Cell No. 2 belonged to him. He explains that the arrangement in each cell is such that his cubicle or *kubol* had many occupants. Other inmates, especially old-timers, slept in the *kubol* with him. He argues that it was possible then for the Coleman cooler to have been placed inside his *kubol* by some inmates who were frightened by the surprise inspection by the jail officers. He emphasizes that the prosecution failed to establish that the Coleman cooler was even his. The evidence of the prosecution, he claims, was, therefore, weak and did not overcome the presumption of innocence he enjoys.

The OSG, on the other hand, stresses that all the circumstances shown by the prosecution are enough to convict Macabare. In contrast, the OSG asserts, Macabare was not able to adequately explain the presence of the *shabu* in his *kubol*. Such failure showed that the defense was not able to overturn the disputable presumption that things which a person possesses or over which he exercises acts of ownership are owned by him. The OSG also contends that Macabare's defenses of frame-up and alibi are unsubstantiated by clear and convincing evidence.

### **The Court's Ruling**

We affirm Macabare's conviction.

### **Circumstantial Evidence**

To uphold a conviction based on circumstantial evidence, it is essential that the circumstantial evidence presented must constitute an unbroken chain which leads one to a fair and reasonable conclusion pointing to the accused, to the exclusion of the others, as the guilty person. Circumstantial evidence on record will be sufficient to convict the accused if it shows a series of circumstances duly proved and consistent with each other. Each and every circumstance must be consistent with the accused's guilt and inconsistent with the accused's innocence.<sup>[9]</sup> The circumstances must be proved, and not themselves presumed.<sup>[10]</sup>

The appellate court, in affirming Macabare's conviction, relied on the following circumstantial evidence: *First*, Macabare was assigned a *kubol* inside Cell No. 2. This served as his quarters. *Second*, he was the lone occupant assigned to the *kubol*. *Third*, when the inspection team reached Macabare's *kubol* inside Cell No. 2, SJO2 Sarino spotted a Coleman cooler. He discovered a plastic pack wrapped in a towel which was on top of the cooler. *Fourth*, the plastic pack contained white crystalline granules which later tested positive for *shabu*. And *last*, Macabare was not able to explain how the plastic pack containing the *shabu* ended up in his *kubol*. These circumstances were duly proved at the trial and are consistent with a finding of guilt. This set of circumstances sufficiently leads one to conclude that Macabare indeed owned the contraband. Moreover, the prosecution was able to show Macabare's liability under the concepts of disputable presumption of ownership and constructive possession.

The defense failed to disprove Macabare's ownership of the contraband. They were unable to rebut the finding of possession by Macabare of the *shabu* found in his

*kubol*. Such possession gave rise to a disputable presumption under Sec. 3(j), Rule 131 of the Rules of Court, which states:

Sec. 3. *Disputable presumptions*. - The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him

Constructive possession can also be inferred from the circumstantial evidence presented. The discussion found in *People v. Tira*<sup>[11]</sup> clearly explains the concept:

x x x This crime is *mala prohibita*, and as such, criminal intent is not an essential element. However, the prosecution must prove that the accused had the intent to possess (*animus possidendi*) the drugs. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the drug is in the immediate physical possession or control of the accused. On the other hand, constructive possession exists when the drug is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Exclusive possession or control is not necessary. The accused cannot avoid conviction if his right to exercise control and dominion over the place where the contraband is located, is shared with another.

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom. However, the prosecution must prove that the accused had knowledge of the existence and presence of the drug in the place under his control and dominion and the character of the drug. Since knowledge by the accused of the existence and character of the drugs in the place where he exercises dominion and control is an internal act, the same may be presumed from the fact that the dangerous drugs is in the house or place over which the accused has control or dominion, or within such premises in the absence of any satisfactory explanation.

In Macabare's case, the defense was not able to present evidence refuting the showing of *animus possidendi* over the *shabu* found in his *kubol*. Macabare's insistence that someone else owned the *shabu* is unpersuasive and uncorroborated. It is a mere denial which by itself is insufficient to overcome this presumption.<sup>[12]</sup> The presumption of ownership, thus, lies against Macabare. Moreover, it is well-established that the defense of alibi or denial, in the absence of convincing