

## EN BANC

[ G.R. No. 148077, February 16, 2004 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. WILLY YANG,  
APPELLANT.**

### DECISION

**QUISUMBING, J.:**

For our automatic review is the judgment<sup>[1]</sup> of the Regional Trial Court of Manila, Branch 18, dated March 13, 2001, in Criminal Case No. 00-181180, the *fallo* of which reads:

WHEREFORE, the accused, Willy Yang (or Yang Yunghi) is hereby convicted of the crime of violation of Section 15,<sup>[2]</sup> Article III in relation to Section 21<sup>[3]</sup> of Article IV of R.A. 6425, as amended by R.A. 7659, involving 4.450 kilograms of shabu with the aggravating circumstance of the offense having been committed by an organized/syndicated crime group, and sentenced to suffer the penalty of death by lethal injection and to pay a fine of P30,000.00 plus the costs.

The 4.450 kilograms of shabu is forfeited in favor of the government and the NBI Forensic Chemistry Division is ordered to turn over the same to the Dangerous Drugs Board, for proper disposition and to submit to this court proof of compliance herewith within five days from notice hereof.

SO ORDERED.<sup>[4]</sup>

Appellant Willy Yang<sup>[5]</sup> (Yang Yung-hi) a.k.a. "Alex Yu," "Yang Xing Li," and "Willy Yeung" is a Chinese citizen, having been born in Xianmen, China. He claims to be a legitimate businessman engaged in the trading of dry goods and garments, in partnership with his Filipina common-law wife, one Gemma Cabad.<sup>[6]</sup> Operatives of the National Bureau of Investigation (NBI), however, believed that appellant was involved in drug trafficking. An entrapment operation was laid for the suspected malefactors. It went sour, the suspects escaped, and the NBI operatives were left holding 4.450 kilos of methamphetamine hydrochloride<sup>[7]</sup> or "shabu" in street parlance.

In an information dated March 9, 2000, the Assistant City Prosecutor of Manila charged appellant with violation of the Dangerous Drugs Law (R.A. No. 6425, as amended by R.A. No. 7659), allegedly committed as follows:

That on or about March 6, 2000, in the City of Manila, Philippines, the said accused not having been authorized by law to sell, dispense, delivered (sic), transport or distribute any regulated drug, did and there, willfully, unlawfully and knowingly sell or offer of sale, dispense, deliver,

transport or distribute white crystalline substance contained in separate five (5) plastic bags —weight four point four five zero (4.450) kilograms of white crystalline substance known as “SHABU” containing methamphetamine hydrochloride, which is a regulated drug.

Contrary to law.<sup>[8]</sup>

When arraigned, appellant with the assistance of a Chinese interpreter pleaded not guilty<sup>[9]</sup> to the charge. Thereafter, trial ensued.

The prosecution’s evidence established that sometime in February 2000, the NBI received a tip from a confidential informer that appellant Yang and one “Henry Yeung alias Yu Chi,” were dealing in prohibited drugs.<sup>[10]</sup> The NBI officers then asked their informer to make arrangements for the purchase of five (5) kilos of “shabu” worth P3.5 million to enable them to conduct a “buy-bust” operation. A deal was made and the suspects agreed to deliver the illicit drug at the Savory Restaurant, T.M. Kalaw St., Ermita, Manila on the afternoon of March 6, 2000. NBI Special Investigator Rodrigo Mapoy was to play the part of the poseur-buyer.<sup>[11]</sup>

At around 5:00 p.m. of March 6, 2000, several operatives of the NBI National Capital Region Office in Taft Avenue, Manila staked out Savory Restaurant. Inside were Mapoy and the confidential informer who were supposed to meet the suspected drug dealers. Shortly thereafter, appellant and an unidentified Chinese-looking, male companion arrived in a car, driven by another unidentified male. The informant then introduced appellant to Mapoy as “Henry Yu.”<sup>[12]</sup>

On appellant’s suggestion, the informant and Mapoy boarded his car. They then proceeded to the rear parking area of the Manila Doctors Hospital. Appellant then asked Mapoy to show him the cash payment for the “shabu.” Mapoy complied and showed him bundles of “boodle money” contained in a plastic bag. The bundles of “boodle money” were so arranged so each bundle had genuine P1,000 bills on top and at the bottom of each bundle.<sup>[13]</sup>

After seeing the bundles of cash, appellant and his unnamed companion alighted the car, with Mapoy and the informant following close behind. The suspects’ driver remained on board the vehicle.

All four of them walked to an unmanned black Kia “Sportage” van in the hospital’s parking lot. Appellant and his companion opened the right front door of the van and got a carton from the right front seat. They showed Mapoy its contents, which consisted of five (5) transparent plastic bags containing a powdery white substance, and a smaller sachet which contained a similar substance. Mapoy was still examining the plastic bags when a group of people unexpectedly came out of the back of the hospital. This caused appellant and his companion to run to their waiting car, which immediately sped away, leaving Mapoy and the informer behind. Since they had no vehicle, Mapoy could not give chase.<sup>[14]</sup>

Mapoy radioed NBI headquarters for instructions and his superiors directed the NBI team to bring the van to the NBI office in Taft Avenue. The law enforcers searched the van and among the items found inside were the carton containing the packets of “shabu” and an identification card issued by “Tri-Media Power of the Philippines”

bearing appellant's picture and the name "Alex R. Yu."<sup>[15]</sup> The ID card gave appellant's address as 29808 Lopez Compound, Karuhatan, Valenzuela City, Metro Manila. Immediately, an NBI team was dispatched to said address, but appellant was not found there. The NBI agents made inquiries in the neighborhood and learned that appellant had moved to No. 36-F Pag-asa St., Karuhatan, Valenzuela. The NBI operatives then went to the latter address and arrested him there at eight o'clock in the evening of March 6, 2000.<sup>[16]</sup>

Later that same evening, the five (5) bags of whitish substance which had been confiscated were turned over to NBI Forensic Chemist II Felicisima M. Francisco for laboratory examination. The haul, which amounted to 4.450 kilograms, were tested and confirmed to be methamphetamine hydrochloride, more popularly known as "shabu," a regulated drug.<sup>[17]</sup>

At the trial, appellant raised the defenses of denial and alibi. He claimed that he was inside his apartment at Pag-asa St., Karuhatan, Valenzuela the whole day of March 6, 2000, until he was arrested by the NBI.<sup>[18]</sup> He admitted that the Tri-Media ID card was his,<sup>[19]</sup> but denied that he was "Alex R. Yu."<sup>[20]</sup> He insisted that his adopted Filipino nickname was "Willy Yang." He claimed that his common-law wife bought it for him so he could claim exemption from the "color coding" traffic scheme of the Metro Manila Development Authority.<sup>[21]</sup> He affirmed that the ID was indeed in the Kia van, but this van was owned by his common-law wife, Gemma Cabad, who had lent the vehicle to one of her friends, one Henry Yang, on March 5-6, 2000.<sup>[22]</sup>

Appellant's testimony was corroborated by Gemma Cabad, who testified that she and her common-law spouse were watching TV when the NBI raiding team arrived.<sup>[23]</sup> Gemma also declared that she acquired the media card for appellant, paying P1,500.00 for it.<sup>[24]</sup> She admitted ownership of the van impounded by the NBI, but insisted that she had lent it to one Henry Yang, a childhood friend of appellant.<sup>[25]</sup>

Appellant also presented one Cristy J. Leones<sup>[26]</sup> and Gemma's sister, Rendel E. Cabad,<sup>[27]</sup> both of whom testified that appellant was arrested without a warrant.<sup>[28]</sup> His trial counsel, Atty. Bonifacio Q. Manansala also took the stand to testify. He said that Special Investigator Rodrigo Mapoy had admitted that he was not sure if appellant was one of the three suspects who escaped during the failed drug bust.<sup>[29]</sup>

The trial court found the testimonies of the prosecution witnesses to be credible. It disbelieved appellant's bare denial and alibi. Accordingly, he was convicted as charged and sentenced to suffer the penalty of death.

Hence, this automatic review.

Appellant raises the following issues for our consideration:

# I

WHETHER OR NOT THE COURT A *QUO* GROSSLY ERRED AND/OR COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT CONVICTED THE

ACCUSED MAINLY ON THE BASIS OF NBI OFFICER SI RODRIGO MAPOY'S HAVING POSITIVELY IDENTIFIED THE ACCUSED IN COURT AND ON THE PRESUMPTION OF HIS HAVING REGULARLY PERFORMED HIS DUTY.

## II

WHETHER OR NOT THE COURT *A QUO* GROSSLY ERRED AND/OR COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT IGNORED NUMEROUS IMPROBABILITIES AND INCONSISTENCIES IN THE PROSECUTION'S NARRATION OF FACTS

## III

WHETHER OR NOT THE COURT *A QUO* GROSSLY ERRED AND/OR COMMITTED GRAVE ABUSE OF DISCRETION IN ITS APPRECIATION AND APPLICATION OF THE FACTS, EVIDENCE, AND LAW ON THE FOLLOWING POINTS, TO WIT:

- A. THAT THE ACCUSED SOLD, DISPENSED, DELIVERED, TRANSPORTED, OR DISTRIBUTED REGULATED DRUGS;
- B. THE APPLICATION OF THE AGGRAVATING CIRCUMSTANCE OF A CRIME BEING COMMITTED BY AN ORGANIZED OR SYNDICATED CRIME GROUP; AND
- C. THE ACCUSED CONSPIRED TO COMMIT THE CRIME CHARGED.

While this case was pending before us, appellant's counsel withdrew his appearance after appellant engaged the services of another lawyer.<sup>[30]</sup> In his reply brief filed by substitute counsel, appellant likewise argues the following: (1) the prosecution failed to prove that appellant acted in conspiracy with or was a member of an organized or syndicated crime group; (2) the Information did not allege any of the qualifying and aggravating circumstances; (3) the NBI failed to comply with the mandatory requirements in the handling and examination of the allegedly confiscated illegal drug; (4) the NBI poseur-buyer failed to positively identify appellant as the suspect in the "buy-bust" operation; and (5) the validity of his arrest.

Basically, the issues raised by appellant may be reduced to only two:

(1) whether the evidence for the prosecution suffices to prove his guilt beyond reasonable doubt; and (2) whether the death sentence was properly imposed upon appellant.

Appellant assails the credibility of the testimony by NBI Special Investigator Rodrigo Mapoy as an eyewitness for being rife with inconsistencies and improbabilities. One, appellant avers that it is highly incredible that a drug dealer would sell P3.5 million worth of shabu to a person he was meeting only for the first time. Two, he contends that it is likewise improbable that a vendor of illicit drugs would have left such a large amount of contraband drugs in an unguarded vehicle. Three, he argues that it is likewise improbable that a drug trafficker would leave his ID card inside a vehicle

used to transport drugs. Four, he insists that it is even more improbable that a drug dealer and his companions would run away at the mere sight of people exiting the hospital.

For the appellee, the Office of the Solicitor General (OSG) submits that the trial court did not err in giving due weight and credence to Mapoy's testimony. The OSG points out that Mapoy testified in a forthright manner and his testimony was unblemished by any fabrication. According to the OSG, Mapoy categorically identified appellant as the person who was the subject of the "buy-bust" operation and who led him and the informer to a parked van where a box was placed, containing 4.450 kilograms of "shabu."

As to the improbabilities pointed out by appellant, the OSG states that the Court may take judicial notice of how dealings in illegal drugs are conducted. Thus, it was not Mapoy as poseur-buyer but the informant whom appellant trusted and hence, it was not unlikely that he would agree to sell to a person recommended to him by the informant. Nor is it improbable for persons to leave valuables or even illegal drugs inside a parked car, provided the parking area is guarded or secured. The OSG points out that since appellant had no idea that he would be the subject of a "buy-bust" operation, he did not bother to remove his ID card from the car. According to the OSG, the behavior of people cannot be stereotyped. Hence, it is not unlikely that the sight of people exiting the building could have instilled fear of possible arrest in the minds of appellant and his companion, enough to make them run away.

As a general rule, on questions of credibility of a witness, we must rely upon the assessment made by the trial court, for it had the unique advantage of having observed a witness' demeanor, conduct, and manner of testifying.<sup>[31]</sup> Unless it can be shown that the trial court overlooked, misapprehended or misapplied certain facts of weight and substance bearing on the elements of the offense, its factual findings are accorded respect and even finality.<sup>[32]</sup>

In the instant case, the trial court found NBI operative Mapoy's testimony credible. He positively identified appellant as one who had transacted with him for the sale of "shabu" in the afternoon of March 6, 2000 at the Savory Restaurant and parking lot of Manila Doctors Hospital. As an NBI officer, Mapoy had the presumption of regularity of performance of duty in his favor. Furthermore, the defense adduced no evidence whatsoever to show that he was improperly motivated to bear false witness against appellant.

We have minutely scrutinized Mapoy's testimony and we find no reason to depart from the finding of the trial court that it is credible. Mapoy categorically and positively testified as to the details of the "buy-bust" operation and positively identified appellant as one of the two persons who tried to sell to him a regulated drug at the parking lot of Manila Doctors Hospital.

There is nothing improbable about a drug dealer selling a huge amount of shabu to a stranger. Drug dealers are known to sell their wares even to strangers.<sup>[33]</sup> However, in this case, the poseur-buyer was with the NBI informer who introduced the former to appellant. Hence, it was not as if appellant was dealing with a stranger. He knew the informant beforehand. It was immaterial, in this instance, whether the appellant as vendor and Mapoy as the vendee had earlier known each