

FIRST DIVISION

[G.R. No.129376, May 29, 2002]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ANGELITO TAN Y NUBLA, ACCUSED-APPELLANT.**

DECISION

YNARES-SANTIAGO, J.:

Angelito N. Tan is a Manila-based businessman who also operates a small restaurant in the San Francisco area. He supports his wife, three sons and a daughter, all of whom reside in the United States. He was accused by the police of selling and possessing illegal drugs. He insists that he was framed, but the police officers who nabbed him claim that he was arrested *in flagrante delicto* during a legitimate buy-bust operation. At stake is the life and freedom of a father of four, who has been sentenced to spend the rest of his productive life behind bars. Also on the line is the State's implacable policy of ridding society of those who wreak havoc on the lives of others by pushing illegal drugs.

Accused-appellant Angelito Tan was charged with Violation of Section 15 (b), Article III in relation to Section 2 (e), (f), (m), (o) of R.A. No. 6425, as amended by P.D. No. 1683, otherwise known as the Dangerous Drugs Act, in an information which alleges:

That on or about the 27th day of June 1994 in Quezon City Philippines, the said accused, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug did then and there wilfully and unlawfully sell or offer for sale 492.4054 grams white crystalline substance known as 'SHABU' containing methamphetamine hydrochloride, which is a regulated drug.

CONTRARY TO LAW.^[1]

Accused-appellant pleaded "Not Guilty" when arraigned.^[2] The case thereafter proceeded to trial.

The prosecution's version of the incident is as follows:

On June 23, 1994, SPO1 Liberato Abalos of the PNP Narcotics Command received a tip from one of their confidential informants that a certain Lito was engaged in drug trafficking at his residence in No. 14-B Condominium, Banawe corner Retiro Streets, Quezon City. Senior Inspector Franklin Mabanag formed a team consisting of Abalos, SPO3 Edgardo Lara, SPO4 Ernesto Carpio and Noel Castanieto to conduct a surveillance on the area. They returned to Camp Bagong Diwa, Bicutan, Taguig, Metro Manila, where their informant called up Lito on the telephone. The informant informed Lito that he had a friend who just arrived from the Middle East and who

was looking for *shabu*. Abalos talked with Lito and told him he wanted to buy five hundred grams of *shabu*. Lito informed Abalos that the price was P700.00 per gram, but after bargaining Lito agreed to sell the *shabu* for P650.00 per gram.^[3]

In the early morning of June 27, 1994, Lito instructed Abalos to meet him at the corner of Banawe and Retiro Streets to pick up the *shabu*. Thus, a buy-bust operation was planned. Abalos was designated as the poseur-buyer. Abalos brought with him seven P1,000.00 bills dusted with ultra-violet powder, contained in a letter envelope with fake money.^[4]

Later that morning, Abalos and the informant positioned themselves at the appointed place. After a few minutes, accused-appellant Angelito Tan approached them. The informant told accused-appellant that he was going to buy five hundred grams of *shabu*, whereupon accused-appellant handed to Abalos a plastic bag saying, "This is it." Abalos looked inside the plastic bag and found five sachets containing yellow substance. Abalos then gave accused-appellant the envelope. When accused-appellant opened the envelope and saw the fake money, he started to run. The informant threw his cigarette butt, which was the cue that the sale had been completed. Mabanag, Lara and Castanieto appeared. Lara chased accused-appellant and caught him near the PCI Bank ten meters away from the corner. Accused-appellant was frisked and informed of his constitutional rights.^[5] Accused-appellant was brought to Camp Bagong Diwa, Bicutan, Taguig, Metro Manila.^[6]

At Camp Bagong Diwa, Carpio took the statement of the poseur-buyer, Abalos, while Mabanag and Lara executed their joint affidavit of arrest. The substance obtained from accused-appellant was sent to the National Bureau of Investigation for analysis.^[7]

That evening, accused-appellant was brought to the PNP Crime Laboratory, Camp Crame, Quezon City. The seven pieces of P1,000.00 bills were brought to the PNP Crime Laboratory for examination. Forensic Chemist Salud Rosales examined accused-appellant and found that his hands were positive for ultra-violet powder.^[8] The examination of the genuine bills also yielded positive for ultra-violet powder.^[9] Meanwhile, the examination of the substance taken from accused-appellant were found to be methamphetamine hydrochloride.^[10]

Accused-appellant had a diametrically opposed version of the events. He alleged that he was with his mistress at the Villa Estrella Resort in Bauang, La Union from June 22 to June 24, 1994, as shown by the receipts he submitted in evidence.^[11] On June 26, 1994, he went to the casino at the Pavilion Hotel in Manila where he was regularly engaged in the money-lending business. He left the casino at 7:00 a.m. the next day and went to the PNB-Republic Bank in Arranque.

Since he was too sleepy to drive, accused-appellant asked his nephew, Michael Solano, to fetch him from the bank and to take him home. When they arrived at the condominium, accused-appellant went upstairs while Solano parked his car. Two men approached him and told him he was driving a carnapped vehicle. The men asked to see his uncle and went up the condominium with Solano. When they got to accused-appellant's unit, they grabbed him by the hand and forced him to go with them.^[12]

Accused-appellant was brought to Camp Papa and told that he was being held for selling *shabu*. Captain Mabanag intimated to him that they will release him for a consideration of P1,000,000.00 and a deed of sale over Solano's car. Accused-appellant refused since he has not done anything wrong and the car does not belong to him.

Later that night, accused-appellant was told that they will go to his house to get some clothes and to inform his mother of his whereabouts. He rode a car with SPO1 Abalos, SPO4 Lara and one Pascual. Abalos told him that they will eat because he was hungry, but accused-appellant told him that he had no money. Abalos produced five one thousand-peso bills and offered to lend the money to accused-appellant if he will pay him back at his house. Accused-appellant reached out for the bills with his left hand. Abalos ordered him to count them. Before he could finish counting, Abalos snatched the bills from him. Suddenly, accused-appellant felt something rough on his hands. After that, accused-appellant was brought to the PC Crime Laboratory in Camp Crame where his hands were examined for ultra-violet powder.
[13]

Accused-appellant's version of the incident is corroborated by several witnesses. His nephew, Michael Solano, confirmed that he went to the bank to fetch his uncle. He further stated that he went with his uncle to Camp Bagong Diwa where he stayed from 12:00 p.m. to 7:30 p.m., until the police released him the evening of the same day.
[14]

Leoncio Pangilinan, Savings Account Clerk of PNB-Republic Bank in Arranque, testified that he entertained accused-appellant, who was a valued client of the bank, at 7:45 a.m. on June 27, 1994. Accused-appellant was fetched by Solano and they left the bank in Solano's car at about 9:00 a.m.
[15]

Eduardo Triumfante, janitor of the Evangeline Building which houses the condominium, saw accused-appellant leaving his residence accompanied by two men.
[16] Mrs. Victoria Tan, accused-appellant's mother, asserts that her son left home on June 26, 1994 and came back at about 10:00 a.m. the next day, after which some men arrived at the house and took her son with them. She remembered no one calling her son on the phone one week before June 27, 1994.
[17]

Ronald Roll, a security guard of the PCI Bank branch at the corner of Banawe and Retiro Streets, testified that in the morning of June 27, 1994, he noticed a commotion a few meters away from the bank and was told by passersby that there was a carnapping. He noticed two men converging at Ubay and Retiro Streets.
[18] Finally, Fernando Angeles testified that he saw accused-appellant at the casino on the night of June 26, 1994, where he introduced to him a woman named Cristy. He last saw accused-appellant at about 6:00 a.m. the next day as he was leaving the casino.
[19]

Finally, SPO3 Millan Batalao testified that in June 1994, the office of the Second Special Operations Group in Camp Bagong officially had no telephone. He issued a certification to this effect.
[20]

After trial, the court *a quo* rendered judgment, the dispositive portion of which reads:

WHEREFORE, finding the accused GUILTY BEYOND REASONABLE DOUBT for Violation of Sec. 15 Art. III in relation to Sec. (e, (f), (m), (o), Art. 1 of R.A. No. 6425, as amended by P.D. No. 1883, the Court hereby sentences the accused ANGELITO TAN Y NUBLA to suffer the penalty of **Reclusion Perpetua** and to pay a fine of P500,000.00 with costs against the accused.

SO ORDERED.^[21]

Accused-appellant interposed this appeal alleging that:

1.] THE RULING THAT THE STATE WAS ABLE TO PROVE THE ACCUSED'S GUILT BEYOND REASONABLE DOUBT IS ERRONEOUS IN THE FACE OF INCONSISTENCIES, CONTRADICTIONS AND INCREDIBLE STATEMENTS IN THE PROSECUTION'S EVIDENCE.

a) NO PHONE CALLS WERE MADE BY THE POSEUR-BUYER TO THE ACCUSED AS PROVEN BY THE ABSENCE OF A TELEPHONE IN THE POLICE'S OFFICE.

b) THE LOWER COURT ERRED IN FINDING THAT ABALOS AND THE CONFIDENTIAL INFORMANT ARRIVED AT THE APPOINTED PLACE AT 10 A.M.; HENCE IT FAILED TO OBSERVE THAT THE BUY-BUST OPERATION/ENTRAPMENT WAS SUPPOSEDLY CONDUCTED WITH NARY AN AGREEMENT AS TO THE TIME THE SALE MUST TAKE PLACE.

c) MABANAG'S AFFIDAVIT OF ARREST (Exh. "V") RUNS COMPLETELY AFOUL WITH THE STATE'S OWN EVIDENCE; IN ADDITION, THE WITNESS/PUBLIC OFFICER IS CHARGEABLE WITH PERJURY AND/OR FALSE TESTIMONY.

d) THE TESTIMONIES OF THE STATE'S WITNESSES AND THE PHYSICAL REPORT (EXH. "S") ON THE PRESENCE OF ULTRA-VIOLET POWDER ON THE ACCUSED'S HANDS MADE BY FORENSIC CHEMIST INSP. LESLIE MAALA ARE HOPELESSLY INCOMPATIBLE WITH EACH OTHER.

e) EVEN CIRCUMSTANCES SURROUNDING THE ACCUSED'S ARREST ARE FRAUGHT WITH INCONSISTENCIES AND CONTRADICTIONS.

f) THE CONCLUSION THAT THE STATE PROVED THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT BECOMES MORE TENUOUS IN THE FACE OF THE OTHER INCONSISTENCIES AND IRREGULARITIES IN ITS EVIDENCE.

2.] THE COURT A *QUO'S* RELIANCE ON THE PRESUMPTION OF REGULARITY IN THE OFFICIAL PERFORMANCE OF OFFICE/DUTY IS EFFICIENTLY NEGATED BY THE FALSE TESTIMONY OR PERJURY

COMMITTED BY THE STATE.

3.] LIKewise ERRONEOUS IS THE TRIAL COURT'S DECLARATION THAT THE ACCUSED'S FRAME-UP, ALIBI OR DENIAL CANNOT BE GIVEN WEIGHT DUE TO THE ALLEGED ABSENCE OF ANY SHOWING OF ILL-MOTIVE ON THE PART OF THE POLICE.

4.] FURTHERMORE, THE COURT A *QUO* COMMITTED A BLUNDER WHEN IT RELIED ON THE WEAKNESS OF THE DEFENSE.

5.] FINALLY, THE PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED STANDS UNREBUTTED; HENCE HIS CONVICTION IS ERRONEOUS.

The Solicitor General, on the other hand, prays that the challenged judgment be affirmed *in toto*, contending that:

- 1.] The trial court did not commit an error when it ruled that there was a buy-bust carried out with due regard to the constitutional rights of appellant and legal safeguards provided for by law.
- 2.] Law enforcers are presumed to have regularly performed their duty; the trial court did not err in giving credence and weight to their testimony.
- 3.] The trial court did not commit an error when the defense of denial or frame-up was not given merit; such defense can be easily concocted and is the usual defense when no other defense is available.
- 4.] The trial court did not rely on the weakness of the defense as appellant's guilt was shown beyond reasonable doubt.

In almost every case involving a buy-bust operation, the accused puts up the defense of frame-up. Since the frame-up theory, like alibi, is easily concocted, the Court usually views such a claim with disfavor. In this particular case, however, accused-appellant's avowal of his innocence rings true.

The testimony given by the witnesses for the prosecution and that of the defense are diametrically opposed to each other. In resolving such conflict, which involves the credibility of witnesses, the usual rule is for this Court to respect the findings of the trial court considering that it is in a better position to decide the question, having heard the witnesses themselves and having observed their deportment and manner of testifying during trial.^[22] Nonetheless, this rule is circumscribed by well-established exceptions.^[23] Thus, the factual findings of the trial court may be reversed if by the evidence or lack of it, it appears that the trial court erred.^[24]

An assiduous examination of the challenged Decision shows that the trial court based its conviction of accused-appellant mainly on the following points,^[25] to wit: