

## SECOND DIVISION

[ CA-G.R. CR-H.C. NO. 01353, August 10, 2006 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHUNG SHIAO TSENG AND LEUNG KUAN, ACCUSED-APPELLANTS.**

### DECISION

**ENRIQUEZ, JR., J.:**

This is an appeal from the Decision rendered by the Regional Trial Court (hereafter RTC), Branch 6, Baguio City in Criminal Case No. 17409-R for *Violation of Sec. 16, Art. III, Republic Act 6425, as amended by Republic Act 7659*, the dispositive portion of which reads as follows:

"WHEREFORE, the Court Finds (sic) the accused Chung Shiao Tseng and Leung Kuan guilty beyond reasonable doubt of the offense of Illegal Possession of 10.397 kgs. of shabu in violation of Sec. 16, Art. III of R.A. 6425 as amended by R.A. 7659 as charged in the Information in conspiracy with another whose whereabouts is yet unknown and hereby sentences each of them to suffer the penalty of Reclusion Perpetua and to pay a fine of 1 million pesos each without subsidiary imprisonment in case of insolvency and to pay the proportionate costs.

The 10.397 kgs. of shabu contained in 11 plastic bags are ordered forfeited in favor of the state to be destroyed immediately in accordance with law.

The accused Chung Shiao Tseng and Leung Kuan being detention prisoners are entitled to be credited 4/5 of their preventive imprisonment in the service of their sentence in accordance with Article 29 of the Revised Penal Code.

SO ORDERED."

The facts of the case as culled from the records are as follows:

On January 28, 2000, appellants Shiao Tseng (hereafter Tseng) and Leung Kuan (hereafter Kuan), together with one Antonio Lim Kao were charged in an Information for *Violation of Sec. 16, Article III, R.A. 6425, as amended by R.A. 7659*, the accusatory portion of which reads:

"That on or about the 12th day of January, 2000, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, and without any authority of law, did then and there willfully, unlawfully and feloniously have in their possession and control 10.397 kgs. of Methamphetamine Hydrochloride (SHABU), a regulated drug, in

violation of the aforecited provision of law.

CONTRARY TO LAW.”

Appellants Tseng and Kuan were arrested while Antonio Lim Kao remained at large. Upon arraignment on June 7, 2000, appellants pleaded not guilty to the charge. During trial, the prosecution presented the testimonies of P/Insp. Reynaldo Biay (hereafter P/Insp. Biay), PO3 Kenneth Malikchan (hereafter PO3 Malikchan), PO2 Arsenio Arrojo (hereafter PO2 Arrojo), P/Insp. Ricarte Marquez (hereafter P/Insp. Marquez), Forensic Chemical Officer Mary Leocy Jabonillo (hereafter Forensic Chemical Officer Jabonillo), Julita Dimapilis (hereafter Julita), Ronnie Failoga and P/Supt. Isagani Nerez (hereafter P/Supt. Nerez). From their testimonies, the prosecution established the following facts:

Sometime in the first week of January 2000, Roberto Peralta (hereafter Roberto) informed P/Supt. Nerez, the Regional Officer of the 14th Regional Criminal Investigation and Detection Group (CIDG), that he saw appellants repacking and selling “shabu” at No. 33 Johnbee Village, Baguio City. Said information was confirmed when PO3 Nicasio Salamera (hereafter PO3 Salamera) and PO2 Rocel Cejas (hereafter PO2 Cejas) conducted a surveillance operation.

Accordingly, P/Supt. Nerez instructed P/Insp. Marquez to apply for a search warrant against appellants for possible violation of the *Dangerous Drugs Act of 1972*. P/Insp. Marquez, together with his witnesses PO3 Salamera, PO2 Cejas and Roberto, proceeded to the Municipal Trial Court in Cities, Branch 1, Baguio City to secure the search warrant.

On January 12, 2000, finding the application to be in order, and upon examination of the witnesses, Judge Benjamin C. Buena issued a search warrant.

P/Supt. Nerez then formed a team composed of P/Insp. Biay, P/Insp. Marquez, P/Insp. Rodolfo Castil, SPO4 Mariano Rabaja, PO3 Malikchan and PO2 Arrojo to implement the search warrant.

Records show that appellants and Antonio Lim Kao were occupying the entire second floor of the place indicated in the search warrant as No. 33 Johnbee Village, although one Cesar Go was renting the said apartment unit.

While the operation against appellants was being planned by the CIDG, the Presidential Anti-Organized Crime Task Force (PAOCTF) and the Baguio City Police carried out another operation against appellants to rescue a kidnapped victim.

On January 11, 2000, acting on the report of one Cai Yanhua that her husband, Sin Ho, was kidnapped and was being detained at No. 33 Johnbee Village in Baguio City, operatives of the PAOCTF raided the place where Tseng was arrested. The Baguio Police arrested Kuan while he was trying to escape. The authorities were able to rescue three kidnapped victims, including Sin Ho. Recovered from the top of the table in the sala where Tseng was arrested was 16.22 grams of suspected shabu. When the raiding team left, Julita, the caretaker of the apartment padlocked the second floor. The foregoing arrests led to the filing of three (3) Informations for kidnapping and serious illegal detention on two (2) counts and one (1) count for violation of R.A. 6425 as amended by R.A. 7659.

However, the CIDG was unaware of the operation conducted by the PAOCTF and the Baguio Police. The following day, January 12, 2000, by virtue of the search warrant, another operation was carried out by the CIDG in the apartment unit.

Since Julita had previously locked the second floor, the CIDG called her to assist in unlocking the place and to search the premises. That afternoon Julita unlocked the apartment unit for PO3 Malikchan and PO2 Arrojo to search the premises. Before the search, Ronald Caliwon (hereafter Ronald), a resident of the place and Lydia Smith (hereafter Lydia), a tenant of the first floor, were asked by the CIDG to witness the search.

In the course of the search, PO2 Arrojo, while being accompanied by Ronald, found one rolled aluminum foil, a porcelain bowl, an improvised tooter, an improvised burner and a lighter inside the sala.

On the other hand, Julita and Lydia accompanied PO3 Malikchan in searching the kitchen. Julita informed the operatives that she had noticed a hole on the kitchen cabinet. PO3 Malikchan searched the cabinet and saw some crystalline substances scattered thereat, he knocked on the cabinet and found that it was hollow. Further search revealed that the hanging L-type cabinet has a hole and inside the hole he discovered eleven (11) plastic bags containing white crystalline powder. He then called PO2 Arrojo, who helped him bring out the plastic bags. During which time, Julita, Lydia and Ronald witnessed the operatives take out the plastic bags from the cabinet's hole.

A Joint Affidavit (*Records, pp. 7-12*) was executed by the raiding team, which contained a list of the items found in the premises. A Receipt (*Records, p. 15*) of the items confiscated was made and signed by P/Insp. Rodolfo Castil, Jr., which was signed by Lydia and Ronald as witnesses.

A Certification (*Records, pp. 18-19*) was executed by Julita attesting to the fact that she witnessed and was present at all times during the search conducted by the CIDG. Lydia and Ronald also signed said certification as witnesses.

The seized items were later forwarded to the PNP Crime Laboratory in Camp Crame for examination.

Forensic Chemical Officer Jabonillo examined the seized items. After conducting several tests, she concluded that the eleven (11) plastic bags, with a combined weight of 10.397 kgs., contained methamphetamine hydrochloride, a regulated drug.

On their part, appellants denied all the charges against them.

Tseng testified that he was hired by one Chen Yen as their family driver sometime in November 1999. Since then, he resided at the house of his employer in Green Valley, Baguio City. In the afternoon of January 10, 2000, he was asked by Chen Yen to fetch the latter's husband, Shiang Hai Chua at No. 33 Johnbee Village, Baguio City. However, when he arrived thereat, Shiang Hai Chua was not there, so he waited for him and spent the night there. In the early morning of January 11, 2000, the 2nd floor of No. 33 Johnbee Village was raided and he was arrested while sleeping in

one of the rooms. Thereafter, he was detained at the PAOCTF office where he was interrogated, maltreated and tortured.

On his part, Kuan testified that he is a cook by profession and that sometime in November 1999, he was hired by a Chen Yen to be their family cook at their residence at Green Valley, Baguio City. Since then, he resided at the basement of his employer's residence at Green Valley. On two occasions in November and December 1999, he was sent by Chen Yen to the 2nd floor of No. 33 Johnbee Village to cook for her visitors thereat. After cooking, he went back to Green Valley. In the morning of January 11, 2002, he was on his way to No. 33 Johnbee Village to get some spices, which he needed at Green Valley, when he was arrested by police officers at the intersection of Magsaysay Avenue and Bokawkan Rd. Baguio City. Thereafter, he was brought to the PAOCTF office where he was detained, interrogated, tortured, maltreated and his little finger cut.

On April 26, 2002, the RTC rendered the assailed decision finding appellants guilty of the crime charged. Hence, the present appeal. As per Resolution dated January 14, 2004, the Court granted and considered Appellants' Memorandum for the Accused (*Records, pp. 276-307*) dated April 16, 2002 as their brief. The issues raised by appellants are as follows:

## I

THE TESTIMONIES OF THE PROSECUTION'S WITNESSES ARE FULL OF MAKE-BELIEVE STORIES, TAINTED LIES AND CONCOCTIONS, INCONSISTENCIES AND IRRECONCILABLE CONTRADICTORY STATEMENTS.

## II

THE 11 PACKS OF SHABU COULD NOT HAVE FIT INTO THE HOLE WHERE THEY WERE ALLEGEDLY FOUND.

## III

THE SEARCH WARRANT OBTAINED BY THE CIDG IS INVALID AND THEREFORE ALL EVIDENCE SEIZED ARE NOTHING BUT FRUITS OF A POISONOUS TREE

***The appeal is without merit.***

Being interrelated, the first and second issues will be discussed jointly.

Appellants mainly question the veracity of the testimonies of the prosecution's witnesses and maintain that there is no credible testimony upon which their conviction could be anchored.

The cardinal rule in this jurisdiction is that where the issue is one of credibility of witnesses, reviewing courts generally will not disturb the findings of the trial court (*People vs. Patoc, 398 SCRA 62*).

The manner of assigning values to declarations of witnesses on the witness stand is best and most competently performed by the trial judge who had the unmatched opportunity to observe the witnesses and assess their credibility by the various

*indicia* available but not reflected on record. The demeanor of the person on the stand can draw the line between fact and fancy or evince if the witness is telling the truth or lying through his teeth. It has been consistently ruled that when the question arises as to which of the conflicting versions of the prosecution and the defense is worthy of belief, the assessment of the trial courts are generally viewed as correct and entitled to great weight. Furthermore, in an appeal, where the culpability or innocence of the accused depends on the issue of credibility of witnesses and the veracity of their testimonies, findings of the trial court are given the highest degree of respect, if not finality (*People vs. Rivera*, 384 SCRA 12).

Equally important is the trial court's assessment of the substance and quality of the testimony of the witnesses. In this light, magistrates have always been guided by the legal truism that evidence to be believed must not only proceed from the mouth of a credible witness, but must be credible in itself (*People vs. Rivera*, *ibid*).

Appellants insist that there were inconsistencies in the testimonies of the prosecution witnesses. However, we do not find their testimonies inconsistent or contradictory with one another. At this point, it is relevant to cite the observation of the Solicitor General:

"In particular, appellants assert that the testimonies of PO3 Malikchan and Dimapilis (i.e. Julita Dimapilis) as to who discovered the packs of shabu are contradictory. This is simply incorrect. Their testimonies are not at all contradictory. Rather, they are complementary with one another since Dimapilis' testimony pertains to her having noticed the hole in the cabinet while PO3 Malikchan was actually the one who investigated and discovered the shabu stashed inside it.

Appellants also sought to discredit the testimony of P/Insp. Marquez whose declaration that he did not join the searching team at the time the search warrant was implemented supposedly contradicted the testimony of P/Supt. Nerez that Marquez headed the perimeter security. This is also incorrect for being brought about by a simple misappreciation of the tenor of the testimonies. As mentioned above, P/Insp. Marquez was actually with the entire team that implemented the search warrant but he was not one of the officers who composed the searching party or those who actually proceeded to go around and inspected the premises. In fact, the officers tasked to do this were PO3 Malikchan and PO2 Arsenio Arrojo. Incidentally, PO3 Malikchan declared that P/Insp. Marquez was actually with the raiding team that went to No. 33 Johnbee Village.

Appellants find fault in the statement of PO3 Malikchan that the subject search warrant was in the possession of P/Insp. Marquez since it supposedly contradicts the statement of PO2 Arrojo that the warrant was then in the possession of P/Supt. Nerez. This assertion is totally misplaced considering that both PO3 Malikchan's and PO2 Arojo's (sic) statements on the matter are not material to the issue of their credibility. It is worth noting that Supt. Nerez and P/Insp. Marquez are two of the senior officers in the team. As such either of them is expected to be in the possession of the search warrant such that it is understandable that at one time PO3 Malikchan may have witnessed the same to be in the possession of P/Insp. Marquez and at another time PO2 Arojo (sic)