

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MANOLO SANTOS Y DE LEON, ACCUSED-APPELLANT.

Ponente: COSICO, J.

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COSICO, J.:

Manolo Santos Y De Leon was indicted in the Regional Trial Court (RTC), Branch 272 of Marikina City under two separate informations in Criminal Cases Nos. 02-2372-D-MK and 02-2373-D-MK for violation of Republic Act No. 9165 (R.A. 9165) otherwise known as the Comprehensive Dangerous Drugs Act of 2002. The accusatory portions of the informations under the said criminal cases are stated as follows:

In Criminal Case No. 02-2372-D-MK accused-appellant was charged with violation of Section 5, Article II of R.A. 9165,

“That on or about the 30th day of October 2002 in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell to poseur buyer and in consideration of P100,000.05 gram of methamphetamine hydrochloride (shabu), which is a dangerous drug, in violation of the above-cited law.

Contrary to law.”[1][Information, p. 1]

Meanwhile, accused-appellant in Criminal Case No. 02-2373-D-MK was charged with violation of paragraph 2(3), Section 11, Article II of the aforesaid law, to wit:

“That on or about the 30th day of October 2002, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession direct custody and control 0.05 gram of methamphetamine hydrochloride (shabu), which is a dangerous drug, in violation of the above-cited law.

Contrary to law.”[2][Information, p.4]

During arraignment and with the assistance of counsel de oficio, accused-appellant pleaded not guilty to the above-quoted charges.[3] After Pre-trial, trial on the merits ensued where the accused-appellant raised the defense of denial and frame-up for the crimes charged. Verily, in discrediting the said defenses, the trial court found that accused-appellant failed to present clear and convincing evidence to refute the prosecution’s evidence of his culpability. Thus, the trial court convicted accused-appellant of the crimes charged as stated in the decretal portion of the appealed Decision dated December 28, 2004 , [4] which reads:

“WHEREFORE, foregoing premises considered, the Court finds the accused MANOLO SANTOS Y DE LEON guilty beyond reasonable doubt of the crime of Violation of Sec. 11 par. 2(3), Art. II of RA 9165 and is sentenced to suffer the penalty of imprisonment for a period of TWELVE (12) YEARS and ONE (1) DAY and to pay the fine of THREE HUNDRED THOUSAND PESOS (Php300,000.00) as provided for in Sec. 11 par. 2 (3), Art. II of RA 9165. The accused is likewise found guilty beyond reasonable doubt of the crime of Violation of Sec. 5, Art.

II of RA 9165 and is sentenced to suffer the penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) pursuant to Sec. 5 Art II of RA 9165. The methamphetamine hydrochloride (shabu) subject of these two cases are ordered confiscated in favor of the government for destruction by the proper government agency.

SO ORDERED.” [5] [Decision, p. 12-13]

This case before us is Santos’ appeal from the above-judgment of conviction.

The Facts

Two conflicting versions of the events surrounding the instant case were presented by the prosecution and the defense. The Office of the Solicitor General summarizes the prosecution’s version as follows:

“On October 30, 2002, at about 9:00 o’clock in the evening, a confidential informant came to the Police Community Precinct (PCP) Calumpang Station to report the rampant selling of shabu by a certain Manolo Santos. Police Inspector Nieva, the Block Commander, then formed a buy-bust team (the team) composed of the Barangay Chairman with several barangay tanod, PO1 Filmor Arizobal and PO3 Sarmiento. The team coordinated with the Philippine Drug Enforcement Agency (PDEA) who sent Police Inspector Pascua to assist and brief them of the buy-bust operational requirements under the new drugs law (RA 9165). The team proceeded to the corner of J.P. Rizal and J.M. Bush streets with the confidential informant. PO1 Arizobal who acted as the poseur buyer, and the confidential informant proceeded to the place referred to by the informant while the other team members positioned themselves in strategic places in the area. The informant introduced PO1 Arizobal to appellant Manolo Santos as someone interested in buying shabu. PO1 Arizobal told appellant that he wanted to buy One Hundred Pesos (P100.00) worth of shabu. Appellant then handed PO1 Arizobal a plastic sachet containing suspected shabu. PO1 Arizobal gave the marked money to appellant. PO1 Arizobal thereafter gave the pre-arranged signal to the other team members by holding his nape. He introduced himself as a police officer to appellant whom he placed under arrest. A search on the person of the appellant yielded another plastic sachet containing suspected shabu. The shabu sold by appellant to PO1 Arizobal was marked with a check by the latter. The team members recovered the marked money from appellant who was then brought to the police station with the marked money and the plastic sachets of shabu. Said sachets were marked “A” and “B” and initialed with the letters “ALF” by PO1 Arizobal. Appellant was later charged with Violation of Sections 5 and 11, Article II of R.A. 9165.” [7][Brief for the Plaintiff-Appellee at 3-4]

Meanwhile, accused-appellant presents the version of the events in this wise:

“On the evening of 30 October 2002, at around 9:00 o’clock, Accused-Appellant, Manolo Santos was at the corner of J.M. Basa and J.P. Rizal Sts. In Calumpang, Marikina City waiting for a ride going home, after having gone earlier to see his sister-in-law who is a resident of J.M. Basa St., when all of [a] sudden a barangay vehicle came to a halt in front of the Accused-Appellant and as the passengers were getting out of the motor vehicle, the Accused-Appellant overheard somebody saying, “Si Manolo nga yan! Si Manolo nga yan!”. These men were wearing ‘tanod’ uniforms except for one whom the Accused-Appellant saw pull out a gun that was tucked in his pants, and was the one who ordered the Accused-Appellant to come with them and ordered him to get inside the motor vehicle.

The Accused-Appellant thinking that it was because of the standing warrant of arrest issued against him in another case, Accused-Appellant hardly offered any resistance. On the other hand, the man holding the gun, nor any of the ‘tanod’ never told Accused-Appellant the reason why they wanted him to go with them.

The Accused-Appellant while inside the vehicle was repeatedly being asked about a certain Rodel Beltran whom the Accused-Appellant said he did not know, and after driving around for a while the Accused-Appellant was subsequently brought to the barangay hall of Calumpang. The Accused-Appellant was then ordered to take off his clothes and the tanods went over them as if they were searching for something, however, they found nothing illegal from his clothing. The Accused-Appellant was then given back his clothes and was taken to the barangay detention cell where he stayed and was made to wait for almost two hours.

It was about eleven o'clock in the evening when Accused-Appellant was brought out the barangay detention cell and taken to the Criminal Investigation Division (CID) of the Marikina City Police Station. While in the way to CID, another policeman, whom the Accused-Appellant identified as PO1 Filmor Arizobal told the Accused-Appellant that if he could give Php10,000.00 his case would only be under Sec. 11 and the case under Sec. 5 will be erased and excluded by him.

The Accused-Appellant was surprised with the proposal and said that he could not produce the amount of money.

The Accused-Appellant was then turned over by his escorts to the CID which took custody of him, and was taken to an investigator by the name of PO2 Soriano who later informed the Accused-Appellant and his escorts of the outstanding warrant of arrest that he has involving another case, nonetheless, the investigator stressed that despite of this they will still pursue the case against him for violation of Sec. 5 and Sec. 11 of RA 9165.

The following day, Accused-Appellant was taken to the PNP Crime Laboratory in Mandaluyong City where he was told that he would be subjected to a drug test, however, after his police escorts came out of the laboratory they immediately left without subjecting the Accused-Appellant to a drug test, taking him back directly to the CID office.”[8] [Appellant’s Brief at 6-7]

Along with the testimony of PO1 Arizobal, the prosecution presented the following documentary evidence, to wit: (1) Request for Laboratory Examination; (2) Chemistry Report No. D-2145-02E; (3) Brown envelope and plastic sachet (in the possession of the Branch Clerk of Court); (4) Buy-bust money; and (5) Sinumpaang Salaysay of PO1 Arizobal. Meanwhile, the defense did not present any documentary evidence and opted to rely on the testimonies of accused-appellant and Ronaldo Eustaquio, a “kumpare” of accused-appellant’s brother who was allegedly present during the latter’s arrest.

The Ruling of the Trial Court

In adjudging accused-appellant guilty of the crimes charged, the trial court ratiocinated in this wise:

“The main issue in these consolidated cases is whether or not the accused can be held guilty beyond reasonable doubt under the aforementioned circumstances under the Information filed against him.

In every prosecution for illegal sale of dangerous drugs, what is material is the submission of proof that the sale took place between the poseur buyer and the seller thereof and the presentation of the drug as evidence in court x x x In the case at bar, the Court gave full faith and credit to the testimony of PO1 Arizobal that the accused was arrested during a buy-bust operation on the night of October 30, 2002 near the corner of J.M. Basa and J. P. Rizal Streets in Calumpang, Marikina City after a confidential informant tipped off the police and the Barangay Chairman and his barangay tanods about the illegal drug pushing activities of Manolo Santos. His testimony was supported by substantial evidence such as the shabu subject of the buy-bust operation, another plastic sachet confiscated from the accused, the buy-bust money used and found thereafter from the possession of the accused on the night of October 30, 2002 and the Sinumpaang Salaysay of the arresting officer, PO1 Arizobal. Likewise,

Chemistry Report No. D-2145-02E was submitted to prove that after the qualitative examinations made on the two specimen subject of these cases, the result showed that the same were positive for Methamphetamine Hydrochloride, a dangerous drug.

x x x

A buy bust operation is a form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of the commission of an offense. Entrapment has received judicial sanction when undertaken with due regard to constitutional and legal safeguards x x x The Court finds the buy bust operation made on the night of October 30, 2002 as a valid one and that the defense did not successfully refute the same. Moreover, the defense of denial and frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the dangerous drugs act x x x It is hard to accept that the accused was framed up in the absence of any proof to the contrary as law enforcers are presumed to have regularly performed their duty. x x x In the case at bar, the allegation of the accused that money was being extorted from him by the arresting policeman remained self-serving considering his failure to file a case for extortion against the said lawman if there was indeed truth to this.

x x x

The accused was caught in the act of committing an offense as a result of the buy-bust operation and therefore, the police and the barangay officers were not only authorized but also duty-bound to arrest the accused even without a warrant x x x consequently, the subsequent search and seizure of the other plastic sachet containing shabu is valid as an incident of the lawful arrest. The prosecution having clearly established the charges of Violation of Section 5, Art. II of RA 9165 and Violation of Sec. 11 par. 2(3), Art. II of RA 9165, conviction is only proper.” [9] [Decision, pp. 9-12]

Hence, the instant appeal.

The Present Appeal

Accused-appellant ascribes the following errors allegedly committed by the trial court in ruling for his conviction:

- THE LOWER COURT ERRED WHEN IT MADE A DIFFERENT ACCOUNT OF CERTAIN FACTS AND CIRCUMSTANCES OF WEIGHT AND SUBSTANCE IN THE TESTIMONY GIVEN BY PO1 ARIZOBAL WHICH IF PROPERLY MADE WOULD HAVE CHANGE THE RESULT OF THE CASE.
- THE LOWER COURT FAILED TO CONSIDER THE INCONSISTENCIES IN THE TESTIMONY OF PO1 ARIZOBAL WHICH WERE NUMEROUS ENOUGH TO CREATE THE NECESSARY DOUBT ON THE TRUTHFULNESS OF THE TESTIMONY GIVEN.
- THE LOWER COURT FAILED TO CONSIDER THE FAILURE OF THE POLICE OPERATIVES TO COMPLY WITH THE BASIC PROCEDURAL REQUIREMENTS PROVIDED UNDER RA 9165.

In his Brief[10] , accused-appellant argues that the findings of facts made by the trial court are inconsistent with the evidence on hand. For instance, the trial court misapplied facts and circumstances testified to by PO1 Arizobal on the presentation of facts in the instant case and which thus became the basis of the findings and conclusions of guilt. Moreover, the lower court failed to consider the inconsistencies and contradictions between the testimony of PO1 Arizobal and his Sinumpaang Salaysay which were numerous enough to create the necessary doubt on the credibility of his testimony. This is coupled with the fact that the fabrication of evidence against

accused-appellant is made manifest on the discrepancy of the markings made on the evidence which were submitted to the crime laboratory as shown from the Request for Laboratory Examination form as compared to the statements made by Arizobal in his testimony concerning this matter.

Lastly, the trial court also erred in failing to consider the failure of the police operatives to comply with the basic procedural requirements of RA 9165 which requires coordination with the Philippine Drug Enforcement Agency (PDEA) which is considered the lead agency in drug-related cases as there is no evidence to substantiate such fact.

On the other hand, the Solicitor General posits[11] that the findings of the trial court must be respected as it had the singular opportunity to observe the demeanor of the witnesses while they were testifying on the witness stand. There is no proof that the concerned police officers or barangay tanods were impelled by improper motive to falsely impute such crime charged. The presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses must prevail.

Likewise, it is important to stress that the alleged inconsistencies in the testimony of prosecution witness Arizobal refers to minor details of the incident which do not affect the credibility of the said testimony. The fact remains that accused-appellant was caught in flagrante delicto selling shabu in a legitimate buy-bust operation. Similarly, the buy-bust operation conducted by the police authorities herein are in substantial compliance with the requirements of RA 9165 considering that the police coordinated with the PDEA before conducting the said operation.

This Court's Ruling

We affirm the conviction of accused-appellant.

The oft-stated rule is that factual findings of the trial court and its evaluation of the credibility of witnesses and their testimonies are entitled to great respect and will not be disturbed on appeal absent any showing that the trial court has overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance.[12] Verily, after a thorough evaluation of the records on hand, we find no reason to deviate from the findings of the trial court as to its appreciation of the facts and evidence in the instant case.

First, it must be impressed upon accused-appellant that the failure of the trial court to properly state the order of the sequence of events attending the buy-bust operation and his eventual arrest does not remove or change the fact that such event occurred. The testimony of prosecution witness PO1 Arizobal is rich in detail with respect to the events that transpired and which led to the apprehension of accused-appellant in this regard, to wit:

“Q In that situation, what did you and the confidential informant do if any?

A: They came closer to the subject to buy that drug, sir.

Q: When you approached Alias Manolo near the light Meralco post, what happened if any?

A: He asked Manolo if I could buy shabu, sir.

Q: What did Manolo say?

A: He said how much?

Q: Who asked Manolo that you would buy shabu?

A: The confidential informant sir because he . . . introduced me that I am the buyer of shabu, sir.

PROS. ABALAJON

Q You were introduced to Manolo?

A: Yes, sir.

Q: What was the reaction of Alias Manolo?

A: He just asked “how much I was going to buy and I said “piso lang”.

Q: Did Manolo give shabu to you?

A: Yes, sir immediately he gave me plastic sachet, sir.

Q What did you do when the plastic sachet was handed to you?

A: I received it and I gave him the P100 bill, sir.

Q: Now could you identify this Alias Manolo if you see him?

A: Yes, sir.

Q: If he is in courtroom will you point to him?

A: Yes, sir. That person wearing orange T-shirt physically slim x x x [TSN, March 3, 2003 at 19-21]

x x x

Q: After the arrest of the accused at the scene of the buy-bust operation, what happened if any?

A: First I ordered him to pull out the contents of his pants and I was able to recover from his left hand pocket the buy-bust money, sir.

x x x

Q: After the accused has brought out the contents of his pocket, what did you do?

A: He showed his left pocket containing sachet of shabu and I recovered from him, sir.

Q: You have already arrested the accused when you have already taken one piece of plastic sachet from him?

A: Yes, sir.” [Id. at 24-26]

Second, the manner of handling the physical evidence of the drugs obtained in the buy-bust operation and those found in accused-appellant’s possession case was likewise sufficiently addressed to by PO1 Arizobal in his testimony to which he testified thus:

Q: How did you handle the evidence that you have recovered from the accused at the place of the incident up to the office of the SDEU?

A: I placed it in my pocket before I turned it over to the SDEU, sir.

x x x

Q: You placed both sachets in your pocket?

A: Yes, sir. We marked them at the SDEU before we brought them to Crime Laboratory sir.

Q: What made you identify that one sachet is the subject of the buy-bust operation and the other is the subject of possession if both sachets were placed in one pocket?

A: We marked letter A and B, sir. [TSN, March 3, 2003 at 32-33]

x x x

Q But you marked it at the SDEU. How were you able to identify the same one for buy-bust operation and one for possession?

A First before we proceeded to the hospital I brought one piece of sachet the one we bought in that buy-bust operation and we put marking sir.

Q: What marking was that?

A: Just check.

x x x

Q: In the possession?

A: None, sir.

x x x

Q: After you have turned over the accused and the evidence to the SDEU, what happened if any?

A: After we turned it over to the SDEU investigator after finalizing the evidence we made a request for laboratory examination to Crime Laboratory, sir.

x x x

Q: Would you know who brought it to the Crime Laboratory?

A: Me personally, sir.

Q: And in what condition were they brought to the Crime Laboratory, EPD Crime Laboratory?"

A: By putting sealed plastic together with request for examination, sir." [Id. at 34-36]

Contrary to accused-appellant's belief, there was no inconsistency in the markings made by PO1 Arizobal on the subject plastic sachets submitted to the crime laboratory for examination as compared to what is stated in the request for laboratory examination. This may be deduced from the following excerpts of PO1 Arizobal's testimony and the Chemistry Report No. D-2145-02E of the PNP Crime Laboratory which shows, among other matters, not only the results of the examination conducted on the subject plastic sachets, but likewise indicate the description of the markings made thereon by the Marikina City police corroborating PO1 Arizobal's testimony on this matter:

"Q: What made you identify that one sachet is the subject of the buy-bust operation and the other is the subject of possession if both sachets were placed in one pocket?

A: We marked letters A and B, sir. [TSN, March 3, 2003 at 33]

x x x

Q: After you have turned over the accused and the evidence to SDEU, what happened if any?

A: After we turned it over to the SDEU investigator after finalizing the evidence we made a request for laboratory examination to Crime Laboratory, sir.” [Id. at 35]

Meanwhile, the description of the markings on the subject plastic sachets submitted for laboratory examination as shown on the Chemistry Report reads:

“SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets marked as A and B respectively, each containing white crystalline substance having the following recorded net weights and markings:

A= 0.05 gram ‘MDLS SELLING’

B= 0.05 gram ‘MDLS POSS’”[13] [Emphasis supplied]

Third, the contradictions in the narration of facts as stated in the Sinumpaang Salaysay of PO1 Arizobal and his testimony do not automatically cast doubt on the trustworthiness of testimony of the said witness. Suffice it to say that the Supreme Court has been steadfast in ruling that oral testimony commands greater weight than mere affidavits.[14]

The inconsistencies between the statements in the Sinumpaang Salaysay and the testimony of PO1 Arizobal pointed out by accused-appellant, such as: the initials Arizobal had written in the buy-bust money, the clothes accused-appellant wore at the time of the buy-bust operation, the conversation between Arizobal and accused-appellant before the arrest, the location of the plastic sachet of shabu recovered in possession of Santos, the pre-arranged signal of Arizobal, are trivial matters referring to minor details which far from destroying the credibility of the testimony of the said prosecution witness all the more serves to strengthen, rather than weaken, his credibility as it erases any suspicion of a rehearsed testimony.[15] What matters is that the prosecution witness’ testimony tallied on material points.[16] For this matter, a perusal of the records of the case would reveal that PO1 Arizobal’s declarations, whether in his Sinumpaang Salaysay or in the latter’s testimony, were firm, straightforward and consistent in stating that accused-appellant was arrested selling shabu through a buy-bust operation. The prosecution witness’ statement as to the details on how such buy-bust operation was conducted as well as on the matter of accused-appellant’s arrest was clear and categorical. Also worthwhile to note is that the said testimony has a marked compatibility with the other evidence on hand, particularly, the Chemistry Report by the PNP Crime Laboratory on the two plastic sachets obtained from the accused-appellant when he was arrested.

Fourth, the defense failed to impute any improper motive whatsoever on the part of PO1 Arizobal which would impel him to falsely testify against accused-appellant. Verily, without any showing that the prosecution witness was impelled by any improper motive, it has been held that such testimony is entitled to full faith and credit.[17] In fact, accused-appellant even concede that he does not know the “barangay people” personally[18] ; that he went with the authorities by virtue of a standing warrant against him[19] ; that he does not know of any other reason why the police would go after him.[20] Lastly, he does not know of any reason why the authorities would fabricate a case against him.[21]

Fifth, it is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[22] As testified to by accused-appellant and Eustaquio, accused-appellant’s own witness, there were at least five (5) men or several persons within the vicinity where accused-appellant was apprehended. Yet, accused-appellant failed to give any explanation as to why the

authorities would single him out. In this regard, and considering the foregoing circumstances, we are more inclined to believe the prosecution's version of the events, that is, accused-appellant was arrested for being caught in flagrante delicto selling shabu and after a search conducted as an incident to his lawful arrest, accused-appellant was also found in possession of 0.05 grams of shabu.

Sixth, we cannot subscribe to accused-appellant's unsubstantiated allegation that the police authorities failed to comply with the requirements set forth under RA 9165 in coordinating with the PDEA. We agree with the Solicitor General that there was substantial compliance with the provisions of the aforesaid law in the instant case as may be inferred from the testimony of PO1 Arizobal which under the foregoing circumstances, we find a credible witness, to wit:

“PROS. ABALAJON

Q Was it necessary for your barangay chairman to be informed and to call PDEA personnel P/Inspector Pascua?

A Because it is the procedure regarding the legality of the operation of illegal drugs it must be in the presence of PDEA personnel sir. No buy-bust operation could be conducted without the presence of the personnel of PDEA under R.A. 9165, sir.”[TSN, March 3, 2003 at 11]

Explaining further during his cross examination, the witness further related:

“Q: Why you have been undertaking that buy-bust operation for the past two years, is it not?

A: But it is now 9165, sir.

Q: What is the procedure?

A: Before you can proceed, there must be

WITNESS (con't.)

. . . presence of PDEA people in the operation of the buy-bust, sir.

x x x

Q: There must be representative of PDEA?

A: yes, sir.

Q: Now, you said that representative of PDEA was called, was there any representative who came with your group?

A: Yes, sir.

Q: Who?

A: The leader, P/Inspector Pascua, sir. [Cross examination, TSN, March 3, 2003 at 51-52]

In fine, accused-appellant's defense of denial and frame-up is certainly belied by his conduct after his apprehension, that is, he did not file a case for illegal arrest against the authorities;[23] on cross examination, accused-appellant affirmed that there is no personal animosity between him and the authorities; and that the first time he actually came to know of prosecution witness PO1 Arizobal was during his arrest.[24] Moreover, we

agree with the trial court that the fact that accused-appellant did not file a case against PO1 Arizobal for attempted robbery extortion[25] makes such claim, self-serving on accused-appellant's part and casts doubt as to the truthfulness thereof.

Significantly, it is again worthwhile to stress that bare denials cannot prevail over the positive identification by the prosecution witnesses.[26] This is likewise true in the defense of frame-up, which like the defense of alibi, has been viewed by the courts with disfavor as it can easily be concocted, hence, commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act.[27] Thus, in *People v. Bongalon*, the Supreme Court had the occasion to expound that the defense of the accused of frame-up cannot generally overcome the presumption of regularity in the performance of official duties under the following rationale:

"We are not unaware of the perception that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, like alibi, frame-up is a defense that has been viewed by the Court with disfavor as it can easily be concocted, hence, commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well-being of society, if the courts, solely on the basis of the policemen's alleged rotten reputation, accept in every instance this form of defense which can be so easily fabricated. It is precisely for this reason that the legal presumption that official duty has been regularly performed exists." [28]

As mentioned earlier, accused-appellant failed to impute any motive on why the police authorities and the barangay tanods would single him out among the people within the vicinity of J.M. Basa Street and the corner of J.P. Rizal Street. Likewise, accused-appellant failed to prove his allegation of extortion allegedly committed by PO1 Arizobal. Verily, we find no rhyme nor reason on why PO1 Arizobal would impute a crime against him and thereafter, extort money considering that accused-appellant himself admitted that it was only the first time during his arrest, did he see and meet the former. Without proof of motive to falsely impute such a serious crime against an accused, the presumption of regularity in the performance of official duty and the findings of the trial court on the credibility of witnesses shall prevail over the accused-appellant's claim of having been framed. [29]

The Proper Penalty

In view of the foregoing disquisition, we entertain no doubt as to the culpability of accused-appellant in the instant case. We find that the prosecution's evidence was able to sufficiently establish accused-appellant's guilt beyond reasonable doubt of the crimes charged.

In the charge of illegal sale of shabu, the prosecution has established with moral certainty all the elements of such offense namely, (1) the identity of the buyer and the seller, the object and the consideration, and (2) the delivery of the thing sold and the payment therefor.[30] Meanwhile, in the prosecution for illegal possession of dangerous drugs, the following facts were proven with moral certainty: (1) that the accused was in possession of the object identified as prohibited or regulated drug;[31] (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug. As the records reveal, the prosecution was able to show by clear and convincing evidence that accused-appellant, apart from the shabu sold to a police officer in the buy-bust operation, was also found to have in his possession a plastic sachet containing 0.05 grams of shabu.

In this connection, Sections 5 and 11 par. 2 (3) of RA 9165 provide the penalty for sale and possession of illegal drugs which state:

“Sec.5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x

Sec. 11. Possession of Dangerous Drugs.

x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or “shabu,” or other dangerous drugs such as, but not limited to, MDMA or “ecstasy,” PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana...”

Notwithstanding that RA 9165 is a special law, accused-appellant shall not be denied the benefit of the Indeterminate Sentence Law since drug offenses are not excluded in its application nor has it been shown that accused-appellant committed any act which would put him within the exceptions to the said law.[32]In this respect, under Section 1 of the Indeterminate Sentence Law, as amended[33] ‘if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same’. Such being the case, in Criminal Case No. 02-2373-D-MK the ruling of the trial court shall be modified. Thus, accused-appellant is hereby sentenced to an indeterminate prison term of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum. Meanwhile, the trial court correctly imposed the fine of P300,000.00 therein as the same is provided for under the aforesaid law.

On the other hand, in Criminal Case No. 02-2372-D-MK, the imposition of the penalty of life imprisonment and the corresponding fine therein for the sale of illegal drugs by accused-appellant is hereby affirmed as the same is well in accord with the law and jurisprudence.

WHEREFORE, premises considered, the decision dated December 28, 2004 of the Regional Trial Court, Branch 272 of Marikina City in Criminal Case Nos. 02-2372-D-MK and 02-2373-D-MK finding accused-appellant MANOLO SANTOS y DE LEON GUILTY beyond reasonable doubt of violation of Sections 5 and 11, par. 2(3), Art. II of RA 9165 IS HEREBY affirmed with modification in that in Criminal Case No. 02-2373-D-MK the accused-appellant, in addition to the payment of a fine in the amount of P300,000.00 is sentenced to suffer an indeterminate prison term of twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum.

SO ORDERED.

RODRIGO V. COSICO
Associate Justice

WE CONCUR:

EDGARDO F. SUNDIAM

Associate Justice

CELIA C. LIBREA-LEAGOG

Associate Justice

[1] I Records at 1.

[2]Id. at 4.

[3]Id. at 26.

[4]Id. 219-231.

[5] Id. at 229-230.

[6]Per testimony of PO1 Arizobal [TSN, March 23, 2002 , pp. 22-23] , the pre-arranged signal came after accused-appellant was arrested.

[7]Rollo at 85-86.

[8] Id. at 43-44.

[9] I Records at 227-230.

[10] Rollo at 38-60.

[11] Id. at 81-94.

[12] People v. Jubail, 428 SCRA 478, 495 [2004].

[13] II Records at 2.

[14] People v. Magbanua, 428 SCRA 617,629 [2004].

[15]People v. Bongalon, 374 SCRA 289, 308[2002].

[16] Ibid.

[17] Jose v. People, 436 SCRA 294, 306[2004].

[18]TSN, June 30, 2004 at 8

[19] Ibid.

[20] Id. at 11.

[21] Id. at 23.

[22] People v. Bongalon, supra. at 304.

[23] TSN, June 30, 2004 at 25.

[24] Id. at 28.

[25] Id. at 30.

[26] People v. Bongalon, at 305.

[27] Id. at 310.

[28] Ibid.

[29] Id. at 306.

[30] Id. at 307.

[31] People v. Tee, 395 SCRA 419, 447 [2003].

[32] Regalado, Criminal Law Conspectus, 381 [2000 ed].

[33] As amended by Act No. 4225.

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