

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RENATO FIDER Y DIMALANTA, ACCUSED-APPELLANT.

G.R. No. 105285. June 03, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

Renato D. Fider appeals from a judgment of the Regional Trial Court of Baguio City convicting him of violation of Section 15 of R.A. No. 6425, as amended, known as the Dangerous Drugs Act of 1972.

Appellant Fider was charged, together with Ma. Sarah Garcia y Francisco de Domondon, with violation of the Dangerous Drugs Act in an information which read as follows:

"The undersigned accuses SARAH GARCIA y FRANCISCO DE DOMONDON and RENATO FIDER y DIMALANTA for VIOLATION OF SECTION 4, ARTICLE II IN RELATION TO SECTION 21, ARTICLE IV OF REPUBLIC ACT 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, committed as follows:

That on or about the 27th day of February 1990, 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] feloniously sold and delivered 100 grams of methamphetamine hydrochloride commonly known as 'SHABU', a prohibited drug [sic], to NBI agents [acting as] 'poseur-buyers', without authority of law to do so, in violation of the above cited provision of the law.

Contrary to law."[1] (Brackets supplied)

The trial court, acting on motion of the defense and on the recommendation of Dr. Rosa Tibayan and Dr. Perfecto Micu, both accredited physicians of the Dangerous Drugs Board, suspended the proceedings against appellant Fider and ordered his temporary confinement for purposes of treatment at the National Bureau of Investigation ("NBI") Treatment and Rehabilitation Center, Tagaytay City, for drug dependency. On 9 May 1991, Fider was arraigned on the amended information quoted above and a plea of not guilty was entered on his behalf. Ma. Sarah Domondon, in contrast, was not arraigned. She jumped bail after the amended information was filed. She has remained at large to date, so far as the record here shows.[2]

The evidence for the prosecution, as summarized by the trial court in its decision, tended to establish the following as relevant facts:

"x x x on February 26, 1990, at about 10:30 a.m., the NBI Office, Baguio City, received information from their confidential informant that Maria Sarah Domondon and her companion, Renato Fider [accused-appellant herein], were engaged in the illicit trade (sale) of drugs at her residence in No. 1 Military Cut-Off, Baguio City. Upon receiving this information, the NBI, Baguio [office] conducted surveillance and discreet inquiries and found the information [to be] true. After confirming the same, a buy bust operation was planned and a team for that purpose, composed of 8 persons, was formed. The team was to be led by Atty. Edward Villarta, an NBI agent, who was to plan the operation. Atty. Bensheen Apolinar, another NBI agent was a member of the team.

Paul Laita, an NBI informer and Artemio (Temy,) Panganiban, NBI Ballistician, were tasked to pose as buyers. The other 4 members whose identities were not given on record were confidential agents of the NBI.

At about 2:00 p.m. of the same day of February 26, 1990, Paul Laita and Artemio Panganiban went to the residence of Sarah Domondon upon instructions of Atty. Edward Villarta to make contact for the purchase of shabu. And upon coming back that same afternoon to the NBI Office from the residence of Sarah Domondon, Paul Laita and Artemio Panganiban told [Atty.] Edward Villarta that Sarah Domondon and Renato Fider agreed initially to sell shabu at P1,200 per gram but later changed their mind when they closed the deal as the accused ultimately agreed to sell and deliver shabu in exchange for two handguns (revolvers) homemade which will be available anytime that night when the handguns are delivered in exchange.

And so, Atty. Edward Villarta asked their Chief for two handguns (revolvers) homemade paltiks worth P1,500 each or a total worth of P3,000.00 and marked them. [At around] 9:00 p.m., the NBI buy bust team proceeded to the Domondon residence with the understanding that Paul Laita and Artemio Panganiban, [acting] as poseur-buyers, were to enter the Domondon house bringing with them the two handguns and after swapping or exchanging it with the shabu, they would then go out. And if Paul Laita and Artemio Panganiban will go out without the handguns, that will then be the signal that the exchange was consummated and for the rest of the buy bust team, who will be positioned and waiting outside the Domondon residence, to go in and apprehend the accused.

Arriving at the Domondon residence at No. 1 Military Cut-Off, Baguio City at about 9 p.m., the NBI buy bust team had to wait however as they noted [that] there were several persons inside the house [at] that time. Thus, they waited until 1:30 a.m., x x x of February 27, 1990 when the visitors in the Domondon residence left.

Finally, Paul Laita and Artemio Panganiban, as planned, entered the Domondon residence bringing with them the two handguns to swap with the shabu as agreed. After a few minutes inside the house, both Paul Laita and Artemio Panganiban came out without the two handguns with Paul Laita likewise already in possession of shabu of about 50 grams wrapped in transparent plastic bag which was the signal for the NBI team to move in.

Immediately, the NBI team waiting outside swooped down on the Domondon residence. But before they could enter the door of the house, Renato Fider closed the door and prevented them from entering. So the NBI fired a warning shot and then pushed open the door. And upon the door being opened, they all entered. Atty. Edward Villarta stayed at the sala monitoring the operation while Bensheen Apolinar, Paul Laita and Temy Panganiban searched the house proceeding to the room of Sarah Domondon where they recovered the two handguns previously swapped, another shabu contained in a can with the label 'blue diamond' wrapped in white plastic cover and shabu paraphernalia for sniffing composed of a glass pipe and aluminum foil (Exhibit E to E-4-a)."[3]

The defense disputes the above facts presented by the prosecution and accepted by the trial court. The defense presented the following as its own version of the facts:

"Aside from being a freelance interior designer, accused Renato Fider is also engaged in a small business of supplying construction materials that are not readily available in Baguio City. At the time of his arrest, he was earning around P6,000.00 to P8,000.00 a month.

Sometime in December 1989, Renato Fider visited a friend of his, whose house is located behind the St. Joseph Church in Pacdal, Baguio City. There he met Dennis Domondon, the husband of Maria Sarah Domondon.

Subsequently, after Dennis Domondon had learned that Renato was an interior designer, the former asked the latter (through their friend who introduced them together) to go to the Domondon house at #1 Military Cut-off Road, Baguio City, because the Domondons were planning to renovate their house with the assistance of an interior designer.

x x x x. He commenced working in late December 1989, just before the New Year, and in the course of his

work, he met Maria Sarah Domondon, who together with her husband, and their two young children, were then living in that house.

x x x x x x x x

As of February 26, 1990, Renato was already through with the renovation work, with just a few finishing touches that remained to be done. x x x x.

x x x x x x x x

At around lunchtime of February 26, 1990, Renato Fider received a telephone call x x x from Maria Sarah Domondon inviting him to dinner at the Domondon house as she wanted him to meet some friends of hers from Manila who could become his prospective clients. Eager to meet potential clients, Renato decided to go to that dinner. x x x x. [H]e proceeded to the Domondon house by taxicab, arriving there sometime between 8:30 to 9:00 p.m.

x x x x x x x x

Sometime later, the guests left, with some leaving at 11:00 p.m., others around 12:00 midnight, and the rest at around 1:00 a.m.

After the party broke up, Renato thinking that it was the polite and proper thing to do, and feeling indebted to the Domondons for having engaged him for the renovation of their house, volunteered to help in the cleaning up of the mess left by the party [sic].

Renato helped the Domondon houseboy, named Mario, in cleaning up the mess. After helping some, Maria Sarah Domondon asked to be excused, and left Renato and the houseboy downstairs, and neither Renato nor the houseboy knew where she went thereafter. This is so because from the kitchen of the house where the houseboy and Renato were cleaning at that time, one could not see the sala, the front door nor the stairs going up the second floor because the dining room and the sala are separated by a wall that go all the way up to the ceiling. In fact, one could enter the sala through the front door, climb the stairs and proceed to the second floor without being seen by the people in the kitchen.

Around 10-15 minutes after Maria Sarah Domondon had left, and while Renato and the houseboy were still in the kitchen cleaning, there was a loud banging on the door with somebody shouting: 'Buksan and pinto, buksan and pinto.' Apparently, there were many people outside the door and they were shouting so loud that they didn't hear Renato telling them to wait, and then they just shot at the door. Frightened, Renato instinctively stayed down on the floor to avoid being hit should they fire again. The men outside then barged in, grabbed Renato's hand and put them at his back, handcuffed him holding a gun at the back of his head. The houseboy, apparently frightened, ran to his room, where he was found, but was released afterwards when Maria Sarah Domondon later said he was just a houseboy. The men who barged in were all over the place, running around the house, opening doors. Later, Renato inquired from the person who handcuffed him what was this all about and why he was being arrested but they just replied: "Teka lang, teka lang, tingnan natin." [4]

As earlier noted, appellant Fider was found guilty of the crime charged and sentenced to suffer life imprisonment and to pay a fine of Twenty Thousand Pesos (P20,000.00) plus cost.[5] In finding Fider guilty, the trial court relied upon the following process of reasoning which it set out in its decision:

"1. There was direct evidence as well as circumstantial evidence to show that accused Renato Fider together with Sarah Domondon were caught in flagrante delicto delivering shabu to Paul Laita and Artemio Panganiban who posed as buyers in a buy bust operation conducted by an NBI team of Baguio City early in the morning of February 27, 1990 at about 1:30 a.m. at No. 1 Military Cut-Off, Baguio City.

It was immediately after accused Sarah Domondon and Renato Fider delivered the shabu contained in a

transparent plastic bag to Paul Laita and Artemio Panganiban who posed as buyers in exchange for two handguns that they were arrested.

And in addition to the shabu in a transparent plastic bag delivered by Sarah Domondon and Renato Fider to Paul Laita and Artemio Panganiban in exchange for the two handguns, the NBI still found another shabu contained in a can labelled 'blue diamond' in a white plastic cover inside the room of Sarah Domondon when the NBI went in.

It must be stressed that the shabu in a transparent plastic bag delivered by Renato Fider and Sarah Domondon to Paul Laita and Artemio Panganiban in exchange for the two handguns is different from the other shabu contained in a can inside a white plastic cover found in the room of Sarah Domondon when the NBI swooped down on the Domondon house after Paul Laita and Artemio Panganiban came out without the two handguns thereby giving the signal that the exchange of the shabu for the two handguns was consummated. [sic]

There is no doubt therefore that Sarah Domondon and Renato Fider had shabu with them and delivered the same in a transparent plastic bag to Paul Laita and Artemio Panganiban and still had some left in a can labelled 'blue diamond' in a white plastic cover inside the house.

2. The pretense of Renato Fider that he was not involved in the illegal delivery of the shabu in exchange for the two handguns and that only Sarah Domondon delivered the same to the NBI poseur buyers could not be given credence as:

First, Renato Fider is admittedly a drug user as in fact, the trial of the case was suspended for sometime for him to be treated and rehabilitated. And only after he was treated and rehabilitated were the proceedings continued. The claim therefore that the idea of the treatment and rehabilitation was that of his lawyer only is false as the petition of Atty. Mandapat [defense counsel below] was very clear that it was in behalf of accused for him to be treated as he was a drug dependent.

In fact, the Medical Certificates issued by Dr. Rosa Tibayan dated October 10, 1990, and the letter dated October 11, 1990, of Dr. Perfecto Micu to the NBI Rehabilitation Center were very clear that being a drug dependent Renato Fider needs further treatment and rehabilitation (see page 58 and 59, Record). Being a drug dependent, Renato Fider therefore is no stranger to possessing and handling drugs.

Second, the information given to the NBI named both Renato Fider and Sarah Domondon as engaging in illicit trade of drugs at No. 1 Military Cut Off, Baguio, which the NBI, after surveillance and discreet inquiries, confirmed and so a buy bust operation was planned. At this stage, therefore, even before the actual sale or delivery, Renato Fider was already mentioned as involved in the trade of drugs.

Third, when Paul Laita and Artemio Panganiban were initially sent to make contact for the purchase of drugs, they came back confirming to Atty. Villarta, their team leader, that Sarah Domondon and Renato Fider were willing to exchange shabu for two (2) handguns after initially offering to sell shabu at P1,200.00 per gram. Going by the tenor of what Paul Laita and Artemio Panganiban said to Atty. Edward Villarta, after coming from their mission to initiate contact on the purchase of drugs, Renato Fider was involved together with Sarah Domondon. At this stage, Paul Laita and Artemio Panganiban had no motive to falsify their report to Atty. Edward Villarta.

Fourth, Renato Fider was present inside the Domondon house at the time Paul Laita and Artemio Panganiban delivered the two (2) handguns and got the shabu in a transparent plastic bag in exchange.

Renato Fider therefore was present at the place and on the time the shabu was delivered.

Fifth, when Paul Laita and Artemio Panganiban went out without the two (2) handguns thereby giving the signal that the exchange was consummated and the NBI operatives outside the Domondon house waiting [sic] swooped down on the house to make the arrest immediately, the accused Renato Fider on seeing them closed

the door to prevent them from going in prompting the NBI team to fire a warning shot and to push the door to open it.

Certainly, this act of Renato Fider of closing the door to prevent the NBI team from going in, testified to by both Apolinar and Villarta, was very indicative of the guilty knowledge on the part of Renato Fider of what has just transpired inside between them (Fider and Domondon) on the one hand and Laita and Panganiban on the other, on the exchange of the shabu with the two handguns.

Sixth, after the door was opened and the NBI came in, they found shabu in a can labelled 'blue diamond' in a white plastic cover, shabu paraphernalia and the two handguns inside the room of Sarah Domondon. This shows that aside from the shabu delivered to the NBI poseur buyers, there were shabu still left with Fider and Domondon inside the house.

Obviously, with all these facts, with Renato Fider, a drug user and drug dependent, being present in the exchange of the handguns with the shabu, closing the door when the NBI agents came rushing in to make the arrest prompting the NBI to force open, with shabu and shabu paraphernalia still found inside thereafter, it cannot be said that Renato Fider was an babe lost in the forest. It is not hard to see that Renato Fider is a confederate of Sarah Domondon not only in the use of drugs but also in her illicit trade or delivery to others. In fact, while all the visitors of the house [had already left], Renato Fider, on his part stayed thereby indicating [that] he is a confederate. His claim that he remained in the house to help clean the mess when there is a houseboy, [in the person of one] Mario, to do the cleaning, is hard to believe.

His pretense therefore that it was only Sarah Domondon who delivered the shabu to the NBI poseur buyers, given these overwhelming facts, cannot be given credence.

x x x x x x x x

4. True, Paul Laita and Artemio Panganiban who posed as buyers did not testify. But then the delivery of the two handguns in exchange for the shabu was testified to by Atty. Bensheen Apolinar and Atty. Edward Villarta, both members of the NBI team which conducted the buy bust operation. Apolinar and Villarta at least knew that at the time Laita and Panganiban entered the Domondon house [that the latter] were carrying two handguns with them to be swapped with shabu x x x and that the handguns were delivered as Laita and Panganiban came out of the Domondon house without the handguns [in their possession] and instead Laita was carrying the shabu wrapped in a transparent plastic bag. Surely, any rational man can readily infer that the two handguns were swapped with the shabu, as previously agreed upon with Renato Fider and Sarah Domondon, under the circumstances.[6]

In his brief, appellant Fider pleads the following assignment of error:

"1.

The trial court erred in finding that there was direct as well as circumstantial evidence showing that the accused-appellant Renato Fider was caught in flagrante delicto delivering shabu to poseurs-buyers Paul Laita and Artemio Panganiban in the buy-bust operation conducted on February 1990 (Decision 9-10).

2.

The trial court erred in rejecting the version of the accused-appellant Renato Fider as well as the character evidence proffered in his defense (Decision 10-13).

3.

The trial court erred in basing the conviction of the accused-appellant on the actuations of Paul Laita and Artemio Panganiban, alleged poseur-buyers, who were not even presented as witnesses (Decision 13-14)

4.

The constitutional rights of the accused-appellant Renato Fider have been violated (Decision, 14-16).

5.

The trial court erred in not acquitting the accused-appellant Renato Fider."[7]

After careful examination of the evidence that was submitted before the trial court, and deliberating on the arguments made by appellant Fider in his Appellant's Brief and those made by the Solicitor General in his "Manifestation in Lieu of Appellee's Brief" dated 22 February 1993, where he recommended that this Court acquit appellant Renato Fider, the Court considers that the evidence against appellant Fider is insufficient to sustain the judgment of conviction and that accordingly, appellant is entitled to be acquitted on grounds of reasonable doubt.

The Court has, in numberless instances, stressed that the burden of proving that an accused is guilty of the offense charged, lies upon the prosecution and that burden must be discharged on the strength of its own evidence and not upon the weakness or upon non-existence of the evidence submitted by the defense. Proof beyond reasonable doubt is indispensably necessary if the constitutional presumption of innocence is to be overturned in any given case and the evidence must produce moral certainty on the part of the court, or that certainty which convinces and satisfies the reasoning and conscience of those who are to act upon the instance that the accused is guilty of the crime charged.[8] Thus, even if the evidence submitted by the accused is weak, as where, for instance, it consists merely of bare denials, the judgment of acquittal must follow if the prosecution fails to discharge its onus probandi.[9]

In drug-related crimes, that is, in violations of the provisions of R.A. No. 6425 as amended, or the Dangerous Drugs Act, it is essential that the prosecution establish by proof beyond reasonable doubt the particular circumstances constituting the offense charged, e.g., the time or date, place and the chemical material involved and other details which comprise the fact of the unlawful possession, sale, use or delivery of the prohibited or regulated material.[10]

In the case at bar, the evidence for the State consisted solely of the testimony of the arresting NBI agents (i.e., the two [2] NBI agents who had waited outside the house of Ma. Sarah F.G. Domondon) and the NBI Forensics specialist. The two (2) handguns which were allegedly bartered or exchanged for 100 grams of "shabu", and which were supposedly obtained from the NBI itself, were not presented in evidence by the prosecution; no explanation was offered for this obvious hiatus in the prosecution's case. For reasons which also do not appear on the record of this case, the two (2) NBI agents who had acted as poseur-buyers were not presented before the trial court. The result was that important questions bearing upon the specific culpability of appellant Renato Fider vis-a-vis the other accused Ma. Sarah Domondon, remained unanswered: e.g., was appellant Renato Fider actually present in the room during the consummation of the guns-for-shabu transactions between co-accused Ma. Sarah Domondon and the poseur-buyers? What was the precise participation of appellant Fider in respect of the guns-for-shabu transactions? Did he physically receive the guns? Did he hand over the "shabu" to the poseur-buyers? Or was appellant Fider, albeit a drug user, essentially an innocent house guest of co-accused Ma. Sarah Domondon, being merely in the wrong place at the wrong time?

We must note in this connection the statements made by Atty. Edward A. Villarta, NBI Team Leader of the buy-bust operation, on cross-examination:

ATTY. ORACION:

And at the precise time of the raid you saw Renato Fider inside that house?

WITNESS:

Yes, sir.

Q: And would it be fair then to say that the reason why you arrested Renato Fider was because at the time you raided the house he was inside the house?

A: He was inside the house.

Q: You said that the alleged shabu was found inside the bedroom?

A: Yes, sir.

Q: The bedroom was upstairs?

A: Yes, sir, the bedroom of Sarah Domondon.

Q: And was there anybody inside that bedroom when the alleged contraband were found there?

A: When the handguns were recovered and the shabu were found inside the room, only Sarah Domondon was there.

Q: How about Renato Fider, where was he at the time?

A: He was at the sala.

Q: The sala is downstairs, is that correct?

A: Yes, sir.

Q: And you were with Renato Fider at the sala?

A: Yes, sir.

Q: Atty. Villarta, under oath, have you ever actually seen Renato Fider in possession of either the two handguns or the shabu, subject of this case, or the shabu paraphernalia which were seized when you conducted the raid?

A: During the transaction I was outside the residence so I could not see it.

Q: Did you ever see Renato Fider in actual possession of the shabu, the subject of this case?

A: No.

Q: Did you ever see Renato Fider in possession of the shabu paraphernalia, the subject of this case?

A: No. It was the two poseur-buyers who can testify on that.

Q: You cannot testify on that?

A: Yes, sir.

Q: It is correct to say that when Paul Laita and Panganiban went to the house at Military Cut-off road on February 26, 1990 in the afternoon you were not with them?

A: I was not with them.

x x x x x x x x

Q: And also, you were not with Paul Laita and Panganiban when they entered the house at about 1:30 in the

morning of February 27?

A: Yes. We were outside the residence.

Q: And you cannot see what was happening inside the house.

A: Yes, sir.

Q: And, therefore, you have no personal knowledge as to whether or not there was really a swapping of handguns and shabu when Laita and Panganiban entered the house?

A: Yes, sir. We only relied on the two poseur-buyers because we cannot enter.

Q: You were relying on them?

A: Yes, sir.

Q: And whatever you know of the alleged agreement to sell shabu and the subsequent agreement to swap guns with shabu was based on the information given to you by Laita and Panganiban?

A: Yes, sir.

x x x x x x x x"[11]

(Underscoring added)

In his "Manifestation,"[12] the Solicitor General pointed out that the two (2) principal prosecution witnesses, Atty. Edward Villarta and Atty. Benshee Apolinar, both of the NBI, were not privy or actual or eye witnesses to the claimed guns-for-shabu transaction, although they may have been the arresting officers of the buy-bust operation. The Solicitor General concluded that the evidence of the prosecution in respect of the exact participation of appellant Fider in that transaction, was plainly hearsay:

"The testimonies of Laita and Panganiban on the supposed exchange was a vital link that could have held the prosecution's case together. Without them, the charges against the accused would inevitably fall apart. Had their testimonies been merely corroborative of a transaction which has already been established by other evidence, then these poseur-buyers need not be presented in court to sustain the appellant's conviction (*People v. Como*, 202 SCRA 200, *People v. de la Cruz*, 184 SCRA 416). Sadly, this is not true in the instant case.

In view of the absence of evidence on the actual exchange of shabu for guns, the failure of the prosecution to present during trial the two handguns allegedly used by the NBI operatives to exchange for shabu creates another void in its case against the appellant. The marked money, or in this case the handguns supposedly exchanged for the shabu, need not be presented if there is independent testimony evidencing the fact of exchange (*People v. Aletra*, 198 SCRA 656). Since there was no such testimony, the inference that can be drawn from the failure of the prosecution to present the handguns in evidence is that the claimed guns for shabu transaction never occurred."[13] (Underscoring added)

We have held in many cases[14] that the testimony of the poseur-buyer becomes material and well-nigh indispensable when the accused denies having committed the prohibited act. Without the testimony of the poseur-buyer, more often than not, there is not convincing evidence that the accused did sell or possess the prohibited or regulated drug.

In *People v. Tantiado*,[15] for instance, the accused sold marijuana sticks to one Nestor Agudo, a Philippine Army officer acting as a poseur-buyer. The prosecution argued that the NARCOM agents surrounded the house of the accused while the poseur-buyer went into that house to purchase P9.00 worth of marijuana. A few minutes later, the poseur-buyer went out of the house and gave the pre-arranged signal -- the tapping of his head -- to the

NARCOM agents. The agents thereupon swooped down on the house of the accused and arrested the latter. The trial court convicted the accused on the strength of the testimony of the arresting NARCOM agents. On appeal, the Court reversed the conviction, saying:

"In view of the NARCOM agents' failure to witness the alleged transaction between their poseur-buyer and the accused, which thus renders their testimonies in respect thereto as hearsay and the inability of the prosecution to establish when and how the agents obtained possession of the three (3) sticks of marijuana cigarettes from the poseur-buyer, the testimony of the poseur-buyer becomes significantly material and indispensable; therefore, the same should not be considered as a merely cumulative or corroborative evidence. Without such testimony, it is inconceivable that the prosecution would be able to discharge its burden of rebutting the presumption of innocence which every accused enjoys under the Bill of Rights in our Constitution. Otherwise stated, the alleged sale of the three (3) sticks of marijuana cannot be established without the testimony of the poseur-buyer. Thus, the instant case presents a situation which is to be viewed as an exception to the general rule that the non-presentation of the poseur-buyer is not essential for the conviction of the accused if the testimony of the former is merely cumulative or corroborative. (citations omitted).

In *People vs. Olaes* (188 SCRA 91 [1990]), this Court held:

'Secondly, this case exemplifies the instance where the non-presentation of the supposed poseur-buyer is fatal to the prosecution's case. The records show that the alleged sales transaction took place inside the house of appellant. In other words, the transaction was supposedly witnessed only by the poseur-buyer, Manuelito Bernardo. Only he has personal knowledge of such transaction which is the subject matter of this prosecution. In *People v. Ramos*, (186 SCRA 184, [1990]) where the alleged informant and poseur-buyer was one and the same person, we stressed that without the testimony of said poseur-buyer, there is no convincing evidence pointing to the accused as having sold marijuana. In this case, the police officers did not see the actual sale of marijuana. For the culprit to be convicted, the element of sale must be unequivocally established. Yet, the alleged poseur-buyer in the 'buy-bust' operation, the only one who allegedly dealt directly with appellant in the purchase of marijuana, was not presented at all at the trial. Under such circumstances, we have repeatedly held that the failure of the prosecution to present the alleged buyer was a fatal blow to the case against the accused.'

There is also merit in the accused's contention that the buy-bust money should have been presented in evidence. In the absence of an eyewitness to the sale of the three (3) sticks of marijuana cigarettes, the identification and submission in evidence of the buy-bust money was necessary, if not indispensable, to prove, even if only circumstantially, the fact of sale. In previous cases, this Court ruled that the prosecution need not present in evidence the buy-bust money if the sale of the prohibited drug had been adequately proven by other independent evidence." (Citations omitted; underscoring added)

Close examination of the decision of the trial court shows that in the absence of the testimony that should have been given by the two (2) NBI operatives, i.e., Messrs. Paul Laita and Artemio Panganiban, the trial court relied upon the testimony given by the remaining two (2) NBI operatives who had arrested appellant Fider and Ma. Sarah Domondon, i.e., Atty. Edward Villarta and Atty. Bensheen Apolinar and upon evidence of a circumstantial nature. Turning first to the testimony given by the two (2) arresting NBI officers, who testified, among other things, to what the trial court described as

"x x x the information given to the NBI [which] named both Renato Fider and Sarah Domondon as engaging in illicit trade of drugs at No. 1 Military Cut-Off, Baguio which the NBI, after surveillance and discreet inquiries, confirmed and so a buy-bust operation was planned, "[16]

we must note that that testimony was hearsay in character. The prosecution did not present the informer who presumably passed on to the NBI information pertaining allegedly to Fider and Domondon. In any case, the information passed on to the NBI and testified to by NBI agents Atty. Bensheen Apolinar[17] and Atty. Edward

Villarta[18] was in the nature of rumor and speculation. Precisely, the alleged buy-bust operation here involved was designed to confirm and concretize that information. The testimony to the effect that Messrs. Laita and Panganiban had confirmed to the NBI Team Leader Atty. Villarta that Sarah Domondon and Renato Fider were willing to enter into a barter transaction involving "shabu" for two (2) handguns, was, again, clearly hearsay in nature. For, as already noted, Messrs. Laita and Panganiban were not presented by the prosecution as witnesses. The net result, therefore, of setting to one side the hearsay evidence upon which the trial court relied, will be seen to be that the trial court had only circumstantial evidence upon which to fall back.

Conviction by circumstantial evidence requires that the proven circumstances, of which there must be more than one, constitute an unbroken chain of evidence which, taken together, lead to but one fair and reasonable conclusion: that the accused was guilty of the crime charged.[19] We have reviewed in detail the evidence of record here and have concluded that the circumstantial evidence presented by the prosecution against appellant Fider was insufficient to constitute the quantum of proof necessary to sustain his conviction.

The circumstantial evidence relied upon by the trial court consisted of the following:

1. Appellant Fider was present at the house of his co-accused Ma. Sarah Domondon at the time of their arrest;
2. Appellant Fider had allegedly closed the door of Ma. Sarah's house in the faces of the NBI agents;
3. Appellant Fider was a drug-user and a rehabilitated drug dependent; and
4. The arresting NBI officers found additional "shabu" (additional to the 100 grams which had allegedly been bartered for the two [2] handguns) inside the room of Ma. Sarah in the Domondon house, in a can labeled "Blue Diamond" with white plastic cover.

We do not consider that these circumstances, taken together, necessarily lead to only one (1) definite conclusion that appellant Fider was in fact guilty of the crime charged.

Firstly, appellant Fider had explained that his presence at the Domondon house on the evening of 27 February 1990 was due to a party hosted by Ma. Sarah Domondon, to which party Fider, then engaged in interior decoration work in the Domondon house, had been invited and which party he attended in the hope of meeting potential clients who might have occasion to require his services as an interior designer. This explanation was not in itself unbelievable or implausible and the prosecution did not controvert it. Secondly, the only evidence of Fider's closing the door against the NBI operatives consisted of the statements of the NBI operatives themselves. But assuming that the door of the Domondon residence had indeed been closed by Fider in the faces of the NBI operatives, it is far from clear that this was in itself a badge of guilt. The prosecution had not shown that the appellant had been warned beforehand that the four (4) men suddenly charging into Ma. Sarah's house in the early morning hours were in fact NBI operatives and not malefactors intent on robbery, or kidnapping or worse felonies. Thirdly, the fact that appellant Fider was a drug dependent or a drug user does not inevitably yield the conclusion that he was, at that particular time and place, in possession of some prohibited or regulated drugs for the purpose of selling or delivering the same. There was simply no evidence that there was some such "shabu" or some other drugs on his person, or otherwise subject to his physical control, at the time of his arrest. Fourthly, the additional "shabu" found by the NBI operatives inside the Domondon house was, as noted above, in fact located at the time of discovery thereof inside Ma. Sarah's room. The prosecution did not suggest that appellant Fider had shared that room with her, and that somehow such additional material was owned by or subject to the control of Fider.

Where the circumstances shown to exist yield two (2) or more inferences, one of which is consistent with the presumption of innocence while the other or others may be compatible with the finding of guilt, the Court must

acquit the accused: for the evidence does not then fulfill the test of moral certainty and is insufficient to support a judgment of conviction. It is scarcely necessary to add that the presumption of regularity in the performance of official duty, in the case at bar the buy-bust operation conducted by the NBI raiding team against the two (2) accused in Ma. Sarah's residence, cannot by itself overturn the constitutional presumption of innocence which is accorded to each accused. The presumption of regularity of the performance of official duty does not, of course, relieve the prosecution of the burden of affirmatively proving the guilt of the accused.

In view of the conclusion we have here reached, there appears no need to address the other issues assigned as error by appellant Fider.

WHEREFORE, without prejudice to the separate trial of co-accused Ma. Sarah Domondon at some time in the future, the decision dated 3 February 1992 of the Regional Trial Court of Baguio City, Branch 6, in Criminal Case No. 7679-R is hereby REVERSED and SET ASIDE and appellant Renato D. Fider is hereby ACQUITTED, for failure of the prosecution to prove his guilt beyond reasonable doubt. Costs de officio.

SO ORDERED.

Davide, Jr., Romero, and Melo, JJ., concur.
Bidin, J., on leave.

[1] Rollo, p. 10. Metamphetamine hydrochloride is a regulated drug and not a prohibited drug as alleged in the amended information. R.A. No. 6425 as amended distinguishes between regulated drugs and prohibited drugs. "Shabu" is the street or vulgar name for metamphetamine hydrochloride which, this Court has held, is a regulated drug covered by R.A. No. 6425 as amended (People v. Macasling, G.R. No. 90342, promulgated 1993; People v. Angeles, 209 SCRA 801 [1992]; People v. Del Mar, 210 SCRA 448 [1992]; People v. Buendia, 210 SCRA 531 [1992]).

[2] Decision of the Trial Court, pp. 8-9; Rollo, pp. 26-27.

[3] Id., pp. 2-4; Rollo, pp. 20-22.

[4] Rollo, pp. 61-67; Appellant's Brief, pp. 5-8.

[5] Decision of the Trial Court, p. 19; Rollo, p. 37.

[6] Id., pp. 9-14; Rollo, pp. 27-32.

[7] Appellant's Brief, pp. 2-3.

[8] E.g., People v. Timtiman, G.R. No. 101663, dated 4 November 1992; People v. Viray, 202 SCRA 320 (1991).

[9] People v. Labarias, G.R. No. 87165, 25 January 1993; People v. Martos, 211 SCRA 805 (1992).

[10] People v. Martos, 211 SCRA 805 (1992); People v. Rojo, 175 SCRA 119 (1989).

[11] TSN, dated 3 October 1991, pp. 33-37. Prosecution witness Atty. Bensheen Apolinar, who was similarly situated as Atty. Edward Villarta, likewise stated that he had no personal knowledge of the claimed guns-for-shabu transaction between the accused-appellant and poseur-buyers; TSN, dated 25 September 1991, p. 12, 14, 20.

[12] Rollo, pp. 161 and 189.

[13] Solicitor General's Manifestation, pp. 18-19; Rollo, pp. 177-178.

[14] People v. Sillo, G.R. No. 91001, dated 18 September 1992; People v. Tantiado, 213 SCRA 365 (1992); People v. Fulgarillas, 212 SCRA 76 (1992); People v. Olaes, 188 SCRA 91 (1990); People v. Ramos, 186 SCRA 184 (1990); People v. Sahagun, 182 SCRA 91 (1990); People v. Rojo, 175 SCRA 119 (1989); People v. Ale, 145 SCRA 50 (1986).

[15] 213 SCRA 365 (1992).

[16] Decision of the Trial Court, p. 11; Rollo, p. 29. See above page 8.

[17] TSN, 25 September 1991, p. 6.

[18] TSN, 3 October 1991, pp. 26-27, 37-38.

[19] Section 4, Rule 133, Revised Rules on Evidence.

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