

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NICK NICOLAS Y AQUINO AND LYNDON ILAW Y PEREZ, ACCUSED-APPELLANTS.*G.R. No. 110116. February 01, 1995*

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-110116/>**BELLOSILLO, J.:**

For illegally selling and distributing shabu, Nick Nicolas y Aquino and Lyndon Ilaw y Perez were charged in an information filed before the Regional Trial Court of Dagupan City with violating Sec. 4, Art. II, of R.A. 6425, otherwise known as "The Dangerous Drugs Act of 1972," as amended. Upon their commission of the offense on 10 March 1990, both accused were immediately placed under detention.

In its decision of 10 January 1992, the trial court [1] found both accused guilty as charged not under Sec. 4 of R.A. 6425 which punishes the sale and delivery of prohibited drugs but under Sec. 15 of said law which penalizes the sale, delivery and distribution of regulated drugs, among which is shabu. As a result, each accused was sentenced to life imprisonment and to pay a fine of P20,000.00. [2]

Both accused appealed each filing a separate notice of appeal. However, only Nick Nicolas, through the Public Attorney's Office, submitted his appellant's brief. The other accused, Lyndon Ilaw, in a letter addressed to this Court, likewise sought the legal assistance of the PAO. But despite our referral of his letter to the PAO, no appellant's brief was filed in his behalf. Notwithstanding such failure however, considering that the instant appeal ultimately redounds to the benefit of Ilaw, and pursuant to Sec. 11, par. (a), Rule 122 of the 1985 New Rules on Criminal Procedure, the Court will consider the appeal of Nicolas applicable as well to Ilaw. [3]

The evidence of the prosecution, on which the trial court mainly based its decision, shows that at about eleven in the morning of 10 March 1990, Sgt. Marcelino Gamboa of the 101st PC Company with office in Lingayen, Pangasinan, operating within the entire province of Pangasinan including the cities of Dagupan and San Carlos, was ordered by his superior officer, Capt. Herminio Calderon, to conduct a buy-bust operation. The target area was Amado Street based on a CIS report, File No. 01-03-90 dated 3 March 1990, prepared by a confidential agent bearing the approval of Capt. Calderon stating that the "Ilaw" brothers and a certain "Nick" were selling shabu in that area. Attached to the report was a sketch of the drug base prepared by another confidential agent.

Following standard procedure, four P100-bills which would be used in the operation were photocopied. Sgt. Gamboa then placed his initials on the bills for marking and identification.

At around seven in the evening of that same day, Sgt. Gamboa, together with five (5) other members of the buy-bust team and the three (3) informants, proceeded to Amado Street in Dagupan City. Upon their arrival, one of the informants assigned to act as poseur-buyer approached accused Nicolas. Lyndon Ilaw, the other accused, also arrived. Upon signal from the poseur-buyer, Sgt. Gamboa approached Ilaw and gave the marked money to him who then passed the same to Nicolas. After receiving the marked bills, Nicolas in turn gave Sgt. Gamboa two (2) decks of shabu contained in a plastic bag. Immediately thereafter, Sgt. Gamboa introduced himself as a

member of the police force. The two accused scampered away but were later apprehended by the other members of the buy-bust team. The marked bills used in the operation were recovered from Nicolas.

The accused were taken to the CIS Field Office in Lingayen, Pangasinan, where they were investigated and detained. They were also photographed in the act of pointing to the marked money used and recovered in the operation. Pat. de Asis of the CIS office prepared a spot report on the apprehension of the accused which was transmitted through radio to the 152nd PC Company Headquarters.

The two (2) decks of shabu were subjected to laboratory examination by Forensics Chemist Capt. Luena E. Layador who certified in her report that the specimens were positive for methamphetamine hydrochloride or shabu with a total weight of 0.06 gram. [4]

The defense has a different story. According to accused Nicolas, at seven in the evening of 10 March 1990 he was in his store at Amado Street arranging bottles of softdrinks. He exchanged the empty bottles with filled ones in Esguerra Sari-Sari store about 200 meters away. While pushing a cart filled with softdrinks back to his store, a Ford Fiera stopped in front of him from which armed men alighted. They forced him to get inside the vehicle. When he asked one of the men, whom he later discovered to be Sgt. Gamboa, as to why he was being treated that way, the latter just told him to go with them. His brother, Ruben Nicolas, arrived and inquired as to the reason for his brother's arrest. However, one of the armed men pointed his armalite rifle at Ruben Nicolas and then fired a shot upwards.

The testimony of Nicolas was corroborated by another witness, Cresente Lopez, who allegedly saw the incident.

Accused Lyndon Ilaw, in turn, testified that he was a tricycle driver and a friend of Nicolas. He said that on 10 March 1990, at about seven in the evening, he was at home. Then his father sent him to buy medicine at the Farmacia Balingit in front of the Public Plaza Market. Before proceeding, he bought cigarettes at Epang's Store. Suddenly, five (5) CIS men arrested and mauled him. Nick Nicolas who was standing in front of his house smoking was also apprehended by the CIS men. Ilaw asked why he was being arrested and they told him that he and Nicolas were selling shabu. When Ilaw denied the accusation, the CIS men mauled him again.

The two accused were initially brought to the CIS safehouse, then to Arellano-Boni near the Alimango Restaurant, and back to the safehouse. They were later taken to the CIS office in Lingayen, Pangasinan. Sgt. Gamboa forced Ilaw to pose for a photograph while pointing to the shabu seized from them. Then they were brought to the police station in Dagupan City and presented to Major de Guzman, afterwhich they were brought back to Amado Street.

Ernesto Ilaw, father of appellant Lyndon Ilaw, corroborated his son's testimony. Ernesto testified that he sent Lyndon to buy medicine for his allergy at the Farmacia Balingit but his son did not return. He later learned from his daughter that Lyndon and Nick Nicolas were arrested by CIS agents. His wife subsequently learned that their son was already in Lingayen.

We sustain the judgment of conviction. The basic question raised in this appeal is the credibility of witnesses for the prosecution as against those for the defense. The rule is settled that the findings of the trial court on credibility of witnesses is entitled to great weight and respect unless some material facts have been overlooked or misconstrued as to affect the result. [5] But this excepting circumstance is not present in the instant case.

Appellants contend that the marked P100-bills were never presented in court for identification or comparison with the xerox copies marked as evidence for the prosecution. They also argue that there are glaring inconsistencies in the testimony of Sgt. Gamboa on the whereabouts of the marked money; that when asked on direct examination, Sgt. Gamboa testified that the marked bills were in the custody of a non-commissioned officer who was on

vacation; [6] but when asked on cross-examination, Sgt. Gamboa testified that it was first deposited in Lingayen, Pangasinan, and was supposed to be presented as evidence in the hearing of 17 July 1990 but an earthquake occurred in the afternoon of the previous day. [7] Thus appellants contend that the foregoing inconsistencies only prove that there was in fact no marked money as no buy-bust operation was ever conducted in the first place. The testimony of Sgt. Gamboa that he deposited the bills in the safehouse is a mere fabrication to deceive the court into believing that a buy-bust operation was made. [8] Finally, appellants submit that the failure of the prosecution to present as witness the informant who acted as poseur-buyer is fatal to the case of the prosecution especially so that the drug seized from appellants was merely planted by the police officers.

We find that the prosecution had satisfactorily proved its case against appellants. There is no compelling reason for us to overturn the finding of the trial court that the testimony of Sgt. Gamboa, the lone witness for the prosecution, was straightforward, spontaneous and convincing. The testimony of a sole witness, if credible and positive and satisfies the court beyond reasonable doubt, is sufficient to convict. [9]

The matter as to who to present as witnesses for the prosecution is addressed to the sound discretion of the fiscal or prosecutor handling the case. And failure to present a witness does not necessarily suggest that said witness will testify adversely against it. [10] Furthermore, the same witness is just as available for the defense who may present him if appellants so desire.

It is a common defense of persons charged with the sale of prohibited and regulated drugs to question the non-presentation of the informants in court. Police authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret. The usual defense - that the non-presentation of informers and poseur-buyers amounts to suppression of key evidence - is non-availing when it comes to buy-bust operations against illegal sale of drugs. [11]

Thus, in the instant case, the fact that the prosecution failed to produce the informant in court is of no moment especially when he is not even the best witness to establish the fact that a buy-bust operation had indeed been conducted. Anyway, Sgt. Gamboa testified on the actual incident and was able to positively identify appellants as the drug pushers selling their wares along Amado Street in Dagupan City. In effect, Sgt. Gamboa has given the prosecution all the evidence it needed to pin appellants on a drug charge and to build a case against them for drug pushing.

The alleged inconsistencies in the testimony of prosecution witness Sgt. Gamboa are neither substantial nor of such nature as to cast a serious doubt on his credibility. The established rule of evidence is that inconsistencies in the testimony of prosecution witnesses with respect to minor details and collateral matters do not affect either the substance of their declaration, their veracity or the weight of their testimony. [12]

Appellants, as earlier noted, try to exploit the supposed inconsistencies regarding the marked bills. It is obvious however that the apparently conflicting statements are mere unwitting lapses or insignificant details and do not bear such weight as to impair the credibility of the witness and his testimony. In fact, even the absence of the marked money will not create a hiatus in the prosecution's evidence as long as the drugs subject of the illegal transaction were presented at the trial court. [13]

Appellants do not refute the fact that the substance recovered as a result of the transaction was shabu although they claim that it was merely "planted" by Sgt. Gamboa and the other police authorities. However, there is no evidence whatsoever to establish the foregoing allegation. What is certain is that in the buy-bust operation, appellants were apprehended while selling shabu to the poseur-buyer, which fact was witnessed by Sgt. Gamboa.

The usual defense of being framed up invoked by drug pushers, as in this case, does not impress us. In order for that defense to prosper, the evidence adduced must be clear and convincing. Like alibi, the defense of frame-up is inherently weak as it is easy to concoct but difficult to prove. And worse for those who invoke said defense, law enforcers are presumed to have performed their duties regularly in the absence of proof negating the same. Appellants failed to show any ill motive on the part of Sgt. Gamboa to falsely impute such a serious charge against them.

Considering the foregoing, we find that the arrest and conviction of appellants are in accordance with law. There were the surveillance and police reports confirming appellants' drug-pushing activities at Amado Street in Dagupan. Upon verification, a buy-bust operation was conducted to entrap them. They were arrested in flagrante delicto selling shabu to a poseur-buyer who paid them with four (4) marked P100-bills. With the substance found positive for methamphetamine hydrochloride and the recovery of the marked money from appellant Nicolas, the denial of appellants cannot be accorded any evidentiary value.

With the passage of R.A. 7659, which amended certain sections of "The Dangerous Drugs Act," and following our pronouncement in *People v. Simon* [14] making the amendatory provisions apply retroactively when favorable to the accused, the penalties imposed by the trial court must be accordingly modified.

Appellants were found guilty of violating Sec. 15 of R.A. 6425 which, as revised, carries the penalty of reclusion perpetua to death and an increased fine of P500,000.00 to P10,000,000.00 if the shabu involved is 200 grams or more; otherwise, if the quantity be less, only the penalty ranging from prision correccional to reclusion temporal shall be imposed.

In the instant case, the weight of the shabu sold by appellants was 0.06 gram, which is less than a gram. Hence, the second paragraph of Sec. 20 as now amended applies, i.e., the reduced penalty of prision correccional to reclusion temporal. With no attendant mitigating or aggravating circumstance, the proper imposable component penalty is prision correccional to be applied in its medium period. Applying the Indeterminate Sentence Law, the maximum shall be taken from the medium period of prision correccional which is two (2) years, four (4) months and one (1) day to four (4) years and two (2) months, while the minimum shall be taken from the penalty next lower in degree, which is arresto mayor the range of which is one (1) month and one (1) day to six (6) months.

WHEREFORE, the decision appealed from finding appellants Nick Nicolas and Lyndon Ilaw guilty of violating Sec. 15, Art. III, of R.A. 6425 is AFFIRMED with the modification that appellants are each sentenced to suffer an indeterminate prison term of four (4) months and twenty (20) days of arresto mayor maximum as minimum, to four (4) years and two (2) months of prision correccional medium as maximum.

It appears from the records that accused-appellants were placed under immediate detention following their arrest on 10 March 1990. Hence, since both have more than served the four (4) years and two (2) months maximum term of imprisonment which we now impose upon each of them, their immediate release from custody is ordered unless they are being held for some other lawful cause.

SO ORDERED.

Padilla, (Chairman), Davide, Jr., Quiason, and Kapunan, JJ., concur.

[1] Penned by Judge Crispin C. Laron, RTC, Dagupan City, Br. 44.

[2] Rollo, p. 27.

[3] Sec. 11, par. (a), Rule 122, states that "(a)n appeal taken by one or more of several accused shall not affect

those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter."

[4] Exh. "D," Records, p. 222.

[5] *People v. Lahaylahay*, G.R. Nos. 104737-38, 26 October 1994.

[6] TSN, 16 July 1990, pp. 24-25.

[7] TSN, 31 October 1990, pp. 43-44.

[8] Rollo, pp. 77-83.

[9] *People v. Javier*, G.R. No. 59438, 28 February 1989, 170 SCRA 763.

[10] *People v. Nabunant*, G.R. No. 84392, 7 February 1990, 182 SCRA 52.

[11] *People v. Olivares*, G.R. No. 86219, 14 June 1990 186 SCRA 536.

[12] *People v. Payumo*, G.R. No. 81761, 2 July 1990, 187 SCRA 64.

[13] *People v. del Pilar*, G.R. No. 86360, 28 July 1990, 188 SCRA 37.

[14] G.R. No. 93028, 29 July 1994.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.