

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. JOSE VIVAR Y PAYABYAB, ACCUSED/APPELLANT.

G.R. No. 110260. August 11, 1994

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-110260/>

FELICIANO, J.:

Jose P. Vivar, 26 years old and married, was accused of violating Section 15, Article III of R.A. No. 6425, as amended, known as the Dangerous Drugs Act of 1972, in an Information[1] which read:

"The undersigned 1st Assistant Provincial Prosecutor hereby accuses JOSE VIVAR Y PAYABYAB of the crime of VIOLATION OF SEC. 15, ARTICLE III, R.A. No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, committed as follows:

That on or about the 7th day of April 1992, in the Municipality of Dasmarinas, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did, then and there, wilfully and unlawfully, administer, deliver, give away to another and sell to one PO3 Nicanor Diaz P100.00 worth of Methamphetamine Hydrochloride commonly known as "shabu," a regulated drug which is prohibited by law, in violation of the provisions of R.A. No. 6425, thereby causing damage and prejudice to the public interest.

Contrary to law."

After Vivar pleaded "not guilty"[2] to the charge, trial ensued and in due time the trial court rendered a judgment of conviction[3] dated 11 February 1993 finding Vivar guilty beyond reasonable doubt of the offense charged, and sentencing him to life imprisonment and to pay a fine of P20,000.00 and the costs of the suit.

On appeal, the lone assignment of error attributed the court a quo was its finding that the accused was guilty beyond reasonable doubt.[4]

The relevant facts are summarized by the trial court's Decision:

"Prior to April 7, 1992, the police authorities of Dasmarinas received reliable information from their asset that someone was selling illegal drugs at Sta. Cristina, Dasmarinas, Cavite. Reacting to this information, the Chief of Police of said town caused the place of the accused to be under surveillance. It was observed that many people frequented the place of the accused which the police authorities believed to be activities related to the buying and selling of shabu or methamphetamine hydrochloride. Thus, Chief Notario formed a team consisting of Police Officers Nicanor Diaz, Jerry Costa and Enrico Set for them to conduct a buy-bust operation furnishing them a P100.00 - peso bill with Serial No. [XD] 720996 (Exhibit 'F'). The designated poseur buyer was Nicanor Diaz.

As planned, the team proceeded to the place of the accused on April 7, 1992 at about 5:00 in the afternoon at Barangay Sta. Cristina, Dasmarinas, Cavite. Once thereat, Nicanor Diaz approached the accused who was out of the house but within his yard and made known his intention to buy shabu. The two team members placed themselves at strategic points from where they could observe Nicanor Diaz and the accused.

Nicanor Diaz handed to, and the accused accepted the, P100.00-peso bill. After receipt of the money, the accused entered the house and after a short while came back and handed to Diaz the shabu. At this point, Diaz gave the pre-arranged signal by touching or scratching his head. Whereupon, the other team members came rushing to the aid of Diaz in subduing the accused who was resisting arrest.

Diaz retrieved the P100.00-peso bill from the accused.

The accused was then brought to the police station where he, together with the shabu, was, turned over to the police investigator. The shabu was sent to the NBI Forensic Chemistry Section for laboratory examination which proved that the specimen sent was indeed shabu (Exhibit 'B')."[5]

These facts were testified to by PO3 Nicanor Diaz and PO3 Enrico Set, members of the Philippine National Police ("PNP") detailed at Dasmarinas, Cavite and more significantly, members of the PNP team that conducted the buy-bust operation. The other pieces of evidence marked and offered by the prosecution during trial are (a) Exhibit "A," a Letter-request for examination of the specimen ("white crystalline substance wrapped in an aluminum foil" weighing 0.0723 gram before the forensic examination) obtained during the buy-bust operation;[6] (b) Exhibit "B," Certification by the NBI Forensic Chemistry Section that the specimen sent for examination tested positive for "shabu;"[7] (c) Exhibit "C," Dangerous Drug Report No. DD-92-259;[8] (d) Exhibit "D," an envelope containing the "shabu" obtained and confiscated from the buy-bust operation;[9] (e) Exhibits "E" and "E-1," the sinumpaang salaysay and signature respectively of PO3 Nicanor Diaz;[10] and (f) Exhibit "F," the marked money used in the buy-bust operation.[11]

The defense set up by the accused consisted of denial. As summed up by the trial court:

"x x x. According to the defense of the accused, at about 2:00 to 3:00 p.m. of that date [7 April 1992], the trio of Nicanor Diaz, Jerry Costa and Enrico Set came to his place while he was in his yard with his sister and niece. Without doing anything, the police, after a civilian asset [informer] threw a P100.00 peso bill towards him, immediately arrested him despite his protestations. He denied selling shabu to Nicanor Diaz."[12]

Except for his testimony, no other evidence, documentary or testimonial, was offered by the accused.

The Court is unable to find merit in this appeal.

Firstly, the denial by the accused, much like alibi, is an inherently weak defense and cannot prevail over the positive identification of Vivar as the doer of the crime and vendor of shabu;[13] all the more so where, as here, no ill-motive can be attributed the accused's captors and accusers.[14] In the absence of proof of an evil motive (e.g., extortion, personal vengeance), the presumption is that the police officers' motive in carrying out the buy-bust operations was simply to perform their official duty which included the enforcement of our laws relating to dangerous drugs.

Secondly, the propositions and arguments of the appeal, i.e., (a) the lack of a formal complaint against Vivar prior to subjecting him to surveillance; (b) the lack of a mission order; and (c) the alleged impossibility of identification by virtue of the proximity of the surveillance team to the door step of the accused where the illegal transaction was consummated; (d) the alleged lack of conclusive evidence to show that the accused was peddling shabu; and (e) the supposed inconsistencies in the testimonies of the prosecution witnesses are insufficient to overcome the positive and straightforward testimonies of the arresting officers that accused Jose "Bubot" Vivar had sold, during a buy-bust operation, shabu to PO3 Nicanor Diaz.[15]

The relevant portion of the testimony of PO3 Nicanor Diaz is as follows:

"INTERPRETER:

Witness pointing to a person inside the courtroom who, when asked, identified himself as Jose Vivar.

ASST. PROS. NOCHE:

Now, did you come to know later on the name of this Bubot?

[PO3 NICANOR DIAZ)

A: Yes, sir.

Q: And, what is the complete name?

A: Jose Vivar, sir.

Q: How did you come to know the name of this person?

A: He gave his name to the investigator, sir.

Q: You mean when you stated before this Honorable Court Jose Vivar, Bubot and according to that accused, Noel, they are the same?

A: Yes, sir.

Q: How did you conduct this buy-bust operation, you acting as poseur buyer?

A: Yes, sir.

Q: And, during that surveillance within that vicinity, where in Barangay Sta. Cristina, DBB, Cavite did you conduct surveillance?

A: Near the house of Bubot, sir.

Q: Inside or outside the house?

A: Outside the house, sir.

Q: And, what did you do, or what happened when you arrived there in that Barangay Sta. Cristina, Dasmarinas, Cavite?

A: We saw several different persons coming and going to the house of the accused. So, we concluded that he was selling shabu.

Q: And, how far were you when you noticed that?

A: Five houses away, sir.

Q: When you say five houses away from this point, referring to this building?

A: Up to Onding's store, sir.

COURT:

About thirty meters, more or less.

ASST. PROS. NOCHE:

After you come to that conclusions that this accused was, in your behalf, engaged in that selling, what did your group do, if any?

A: We agreed that I will pose as buyer, sir.

Q: And, what did you do as poseur buyer?

A: I went directly to the house of Bubot and bought shabu, sir.

Q: Was it outside or inside the house when you approached him?

A: Outside the house, sir.

Q: How far was Bubot from the door of the house?

A: Just outside the door, sir.

Q: An armlength?

A: Yes, sir.

Q: And, what was Bubot doing, if any, when you approached him and told him you were buying shabu? What did you do rather?

A: I told him I will buy shabu worth P100.00, sir.

Q: And, where was that money . . . Did you have money at that time?

A: Yes, sir.

Q: What is the amount of that money?

A: P100.00 sir.

Q: Do you know the serial number of that money, if you remember?

A: Yes, sir.

Q: Can you state before this Honorable Court the serial number?

A: XD720996, sir.

Q: And, what did you do with the money when you approached him?

A: I gave him the money, sir.

Q: When he received the money, what did this Jose Vivar do, if any?

A: He went inside the house, sir.

Q: And, after that?

A: He came back with the shabu in an aluminum foil, sir.

Q: What did you do when he handed to you that aluminum foil with shabu?

A: I touched my head as a signal to my companions that I was able to buy shabu from him and I arrested him.

Q: After you made that sign, what happened next?

A: My companions arrived while Jose Vivar was struggling.

Q: What do you mean by 'nagpupumiglas'?

A: He was resisting, sir.

Q: What, if any, did your companions do when they approached you and Vivar?

A: They approached to arrest that man and brought him to the police station of Dasmarinas for investigation, sir."[16]

On the other hand, the corroborative testimony of PO3 Enrico Set is as follows:

"[ASST. PROS. NOCHE]

Q: And after the said money was handed to Nicanor Diaz, what did your group do?

[PO3 ENRICO SET]

A: We proceeded to Barangay Sta. Cristina, sir.

Q: And what happen[ed] there if any, were you able to conduct a buy-bust operation?

A: Yes, sir.

Q: And who was the one acted as poseur buyer?

A: Nicanor Diaz, sir.

Q: And was said police officer ... or what did this police officer do as poseur buyer?

A: We agreed that it was Nicanor Diaz who will act as poseur buyer and upon buying he will made a signal by scratching his head, that means to buy shabu.

Q: When you arrived at the place, by the way, do you know the person who was the object of that buy bust operation?

A: Not yet, sir.

Q: When you arrived at that place, what happen[ed] if there is any?

A: Nicanor Diaz was trying to buy [while] we were in another house and then when we saw that he scratched his head we approached him and helped subdue this Jose Vivar because he was resisting Nicanor Diaz.

Q: By the way, before you proceeded to the place did you have any idea to what particular house you were going to conduct the buy-bust operation?

A: It was Nicanor Diaz, I do not know but it was Nicanor Diaz who knows.

Q: Where were you and Mr. Costa when this Diaz proceeded to the said place where he will buy the shabu?

A: In any house also in the same Barangay Sta. Cristina, sir.

Q: And how far is that house, how many meters away.

A: More or less 30 meters, sir.

Q: And when, according to you, you approached them, after that Diaz was able to buy shabu?

A: Yes, sir.

Q: And you helped him and approached this person?

A: Yes, sir.

Q: What did you do after your group apprehended that person?

A: We brought him to our police investigator, sir, to investigate.

Q: If said person that you mentioned who was apprehended during that time is inside this courtroom, will you be able to identify the same?

A: Yes, sir (witness is pointing to a person who when asked his name Jose Vivar).

Q: By the way, what happen[ed] to the shabu which was quote (sic) by Diaz from the accused?

A: We turn[ed] over to our investigator, sir.

Q: How about the money which was used?

A: We turn[ed] over the money to the police investigator."[17]

In respect of the lack of a formal complaint against Vivar and of a police mission order, the Court has held that it will not pretend to establish on a priori basis what detailed acts or measures police authorities might undertake and carry out in entrapment operations[18] so long, of course, as such measures do not constitute violations of the constitutional and statutory rights of the accused. We are not aware of any constitutional or statutory provision which requires a prior formal complaint against a suspect before an entrapment operation may be mounted against him.

As to the alleged testimonial inconsistencies, the issue is ultimately one of the credibility of witnesses. The Court has countless times reiterated the rule that the findings of the trial court are accorded great weight and respect as trial judges are undeniably in the best position to weigh the declarations of witnesses in light of their opportunity to observe physically the witnesses' conduct and attitude during trial.[19] Furthermore, inconsistencies in the testimonies of witnesses do not necessarily damage their credibility provided such inconsistencies relate to minor details and are reasonably explainable in the specific circumstances of a case. Inconsequential variances are commonly considered as badges of truth.[20]

Finally, appellant's contention that the presumption of regularity in the performance of official duties by police officers must yield to the constitutional presumption of innocence indicates a basic confusion in the mind of appellant or his counsel. The constitutional presumption of innocence is, after all, a presumption merely which is precisely overcome by affirmative proof beyond reasonable doubt. The presumption of regularity of performance of official duty cannot, by itself, constitute proof of guilt, beyond reasonable doubt. We believe that, in the present case and contrary to the submission of the appellant, the accused's guilt was established beyond reasonable doubt.

We turn, finally, to determination of the penalty properly imposable upon appellant Vivar. Under Sections 15 and 20 of R.A. No. 6425, as last amended by R.A. No. 7659, as construed and applied with retroactive effect in the very recent Decision of this Court in *People v. Martin Simon* (G.R. No. 93028, 29 July 1994), and given the circumstances that (a) the "shabu" sold by appellant Vivar amounted only to one (1) aluminum foil with a weight of 0.0723 gram and that (b) no aggravating or mitigating circumstance was found in the instant case, the penalty properly imposable upon appellant Vivar is prision correccional in its medium period. Applying the Indeterminate Sentence Law, again in accordance with the majority ruling of this Court in the *Martin Simon* case, appellant Jose Vivar is properly sentenced to imprisonment for a term ranging from, as a minimum, six (6) months of arresto mayor to a maximum of two (2) years and four (4) months of prision correccional in its medium period.

WHEREFORE, for all the foregoing, the Decision of the Regional Trial Court, Fourth Judicial Region, Branch 21 of Imus, Cavite in Criminal Case No. 2287-92 dated 11 February 1993 is hereby AFFIRMED, with the modifications, however, that the fine of P20,000.00 is deleted, and that appellant shall suffer imprisonment for an indeterminate period ranging from six (6) months of arresto mayor as minimum to two (2) years and four (4) months of prision correccional as maximum. Costs against appellant.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Rollo, p. 5; Records, p. 1.

[2] Records, p. 18.

[3] Penned by Executive Judge Roy S. del Rosario.

[4] Appellant's Brief, Rollo, pp. 33-38.

[5] Trial Court Decision, Records, pp. 78-79.

[6] Records, p. 31.

[7] Id., p. 32.

[8] Id., p. 33.

[9] Records (Attached Separate Envelope).

[10] Records, p. 4.

[11] Records (Attached Separate Envelope).

[12] Trial Court Decision, Records, p. 79.

[13] People v. Gomez, G.R. No. 106344, 6 January 1994 and People v. Belibet, 199 SCRA 587 (1991).

[14] People v. Pelones, G.R. No. 86159-60, 28 February 1994.

[15] People v. Barte, G.R. No. 103211, 28 February 1994.

[16] TSN (Nicanor Diaz), 10 August 1992, pp. 3-6.

[17] TSN (Enrico Set), 8 September 1992, pp. 5-8.

[18] People v. Roldan, G.R. No. 98398, 6 July 1993.

[19] People v. Lagrosa, G.R. No. 105956-57, 23 February 1994; People v. Roldan, supra; People v. Naguita, 208 SCRA 207 (1992); People v. Li Wai Cheung, 214 SCRA 504 (1992); People v. Bolosa, 209 SCRA 476 (1992); People v. Ocampo, 206 SCRA 223 (1992); People v. Magaluna, 205 SCRA 266 (1992); People v. Fabian, 204 SCRA 730 (1991); Eduardo Arroyo v. Court of Appeals and Rubi Vera-Neri v. People, 204 SCRA 750 (1991); People v. Toribio, 198 SCRA 529 (1991); People v. Catubig, 195 SCRA 505 (1991); People v. Flores, 185 SCRA 366 (1990); People v. Caringal, 176 SCRA 404 (1989); People v. Perez, 175 SCRA 203 (1989); People v. Valdez and Orodio, 159 SCRA 152 (1988) and People v. Cayago, 158 SCRA 586 (1988).

[20] People v. Canceran, G.R. No. 104866, 31 January 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.