

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BALTAZAR BONGALON Y MATEOS, ACCUSED-APPELLANT.

G.R. No. 125025. January 23, 2002

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PER CURIAM:

This case involves the unlawful sale of 250.70 grams of Methamphetamine Hydrochloride (shabu), a regulated drug, in violation of Section 15, Article III of Republic Act No. 6425, as amended, otherwise known as “The Dangerous Drugs Act of 1972.”

The crime was allegedly committed as follows:[1]

“That on or about the 8[th] day of December 1994, in the Municipality of Parañaque, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused (Baltazar Bongalon), not being lawfully authorized by law, and by means of motor vehicle, did then and there willfully, unlawfully and feloniously sell, deliver and give away to another, one (1) heat-sealed transparent plastic bag/sachet containing brown crystalline substance weighing 250.70 grams, which was found positive to the test for Methamphetamine Hydrochloride (shabu), a regulated drug, in violation of the above-cited law.

CONTRARY TO LAW.” (emphases ours)

When arraigned, the accused pled not guilty.[2] Trial ensued.

The prosecution presented the following witnesses, to wit: (1) PO3 Noel Castañeto, the poseur-buyer; (2) PO3 Rogelio Galos, member of the buy-bust operation team; and (3) Police Senior Inspector Julita de Villa, the forensic chemist. The presentation of PO2 Felipe Metrillo, member of the buy-bust team, was dispensed with after the prosecution and the defense had stipulated at the trial that he would merely corroborate the testimony of PO3 Galos.

The prosecution evidence reveals that in the morning of December 7, 1994, a confidential informant reported to the Special Operations Group (SOG) of the Narcotics Command (NARCOM) in Camp Ricardo Papa, Bicutan, Taguig, Metro Manila, that a certain “Baldo” (the accused) was engaged in selling shabu, a regulated drug. Police Senior Inspector Franklin Moises Mabanag immediately formed a buy-bust operation team with PO3 Noel Castañeto as the poseur-buyer and PO3 Rogelio Galos and PO2 Felipe Metrillo as members.[3]

That same day, the confidential informant contacted the accused through a mobile phone and introduced PO3 Castañeto to him as a “friend” who wanted to buy shabu. The accused and PO3 Castañeto negotiated the terms of the “transaction” over the mobile phone. PO3 Castañeto told the accused that he needed 250 grams of shabu. The accused pegged the cost at P1,000/gram of shabu, for a total sum of P250,000.00. The accused then instructed PO3 Castañeto to call the following morning to confirm the sale.[4]

P/Sr. Insp. Mabanag briefed the buy-bust operation team members on their respective roles in the “sting” and gave to PO3 Castañeto two (2) P500.00 bills bearing serial numbers BT423424 and BQ352570 and five (5) bundles of “boodle money” to be used as buy-bust money. PO3 Castañeto affixed his signature at the bottom right

corner of each bill for identification purposes.[5] They placed one genuine P500.00 bill on top, and another one at the bottom, of the “boodle” money. The bundles were first secured with money straps with markings P50,000.00, United Coconut Planters Bank and wrapped in a transparent plastic then placed inside a brown envelope.[6]

At 9:00 a.m., December 8, 1994, PO3 Castañeto talked again to the accused through the mobile phone to confirm if their transaction would push through. The appellant told him that they would meet at 3:30 p.m. that same day, near the Burger Machine stall along Doña Soledad in Better Living, Parañaque.[7]

PO3 Castañeto’s team and the confidential informant arrived at the designated place at 3:00 p.m. using a private vehicle. He and the confidential informant parked their car near the Burger Machine stall and waited for the accused to arrive. PO3 Galos and PO2 Metrillo, on the other hand, parked just a few meters behind the car used by PO3 Castañeto.[8]

At 3:30 p.m., the red Nissan Sentra sedan driven by the accused, with plate No. TPL 488, parked in front of the car of PO3 Castañeto. The accused was alone. The confidential informant and PO3 Castañeto approached the Nissan Sentra and talked to the accused. After a brief conversation, the accused asked for the money. PO3 Castañeto showed him the buy-bust money.[9] Satisfied, the accused immediately handed over to PO3 Castañeto a package wrapped in a newspaper. After PO3 Castañeto had checked out that the package contained the suspected regulated substance, he gave the pre-arranged signal to his team by waiving his hand. The back-up team members immediately announced that they were NARCOM agents and arrested the accused.[10] They informed the accused of his constitutional rights and brought him to Camp Papa for investigation.[11]

On December 9, 1995, the confiscated substance was brought to the Philippine National Police (PNP) Crime Laboratory for examination.[12] P/Sr. Insp. Julita de Villa, forensic chemist of the PNP Crime Laboratory Services, conducted a physical, chemical and chromatographic examination on the substance to determine the presence of Methamphetamine Hydrochloride. The result is as follows:[13]

“SPECIMEN SUBMITTED:

Exh. “A”- One (1) light blue China Station bag containing one (1) heat-sealed transparent plastic bag marked as Exh. “A-1” with 250.70 grams of brown crystalline substance. xxx

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of prohibited and/or regulated drug.

FINDINGS:

Qualitative examinations conducted on the above-stated specimen gave POSITIVE result to the tests for Methamphetamine hydrochloride (Shabu).”

P/Sr. Insp. De Villa testified that the package containing the shabu was completely sealed when she received it and she was the one who opened it to examine its contents.[14]

For its part, the defense presented the accused himself, Baltazar Bongalon. He tried to refute the claim of the prosecution witnesses that he was alone when the NARCOM agents arrested him for the alleged unlawful sale of shabu. Allegedly, the buy-bust operation was bogus and the NARCOM agents framed him for extortion.

The accused testified that in the morning of December 8, 1994, he was cleaning his house in United Parañaque. Just before noon that same day, his brother, Melchor Bongalon, arrived and told him that their friend, “Boyot,” rang him and asked to tell the accused to return the Sega tapes he borrowed. Boyot, whose real name is Juancho Tangsengco, lives in Syria Street, Better Living Subdivision, Parañaque. Melchor Bongalon, on the other hand,

lives in Tondo, Manila.[15]

As the accused had previously planned to take his then 4-year old son, Mark Anthony, to Star City, he decided to go to Better Living at 2:00 p.m. to return the Sega tapes first. Melchor allegedly accompanied the accused and his son to Boyet's house. They used the red Nissan Sentra sedan owned by their sister.[16] The accused was at the driver's seat, Melchor was at the passenger side in front and Mark Anthony was at the back. He passed via Doña Soledad and Russia Streets. While cruising along Russia Street, he slowed down a bit because he had to turn right to United Nations Street. Suddenly, about eight (8) men in civilian clothes bearing armalite automatic rifles and .45 caliber firearms intercepted him.[17] (He learned later that the armed men were NARCOM agents led by PO3 Castañeto). The firearms were pointed at the car he was driving. He rolled down the car's window and asked what his violation was and if they had a warrant of arrest against him. They ignored him and instead, ordered them to get out of the car. He persisted in verifying what his violation was but did not get any reply from them. Thereafter, they were ordered to board the car again. Two (2) men boarded his car—PO3 Galos sat at his left side, taking the driver's seat, while the other sat at his right side—and sandwiched him. PO3 Castañeto and PO2 Mentrillo also boarded the car and sat at the back seats, beside Melchor and Mark Anthony. The rest of the arresting team headed towards their vehicle.[18]

The accused and his alleged companions were taken to Camp Papa for investigation. When told that he was carrying shabu in his car, he asked if he could see the substance. Allegedly, the NARCOM agents refused. After the investigation, P/Sr. Insp. Mabanag asked him if they could go to their house to check if he stashed any shabu in his house. He agreed.[19] They reached his house in United Parañaque by 7:00 p.m. that same night. About seven (7) policemen entered his house. PO3 Galos was left in the car to guard him and his son. His brother, Melchor, was left in the custody of NARCOM in Camp Papa.[20]

Fifteen (15) minutes later, the police let the accused and his son enter their house as the NARCOM agents continued searching his house. His wife and his son were seated beside him in the living room. His wife asked for a search warrant which elicited a cold reply from the NARCOM agents that it was not necessary ("hindi na uso yon"). The search lasted for two (2) hours and yielded negative results. The NARCOM agents tried to take the wife of the accused to Camp Papa, but she became hysterical. They left her behind and instead brought the accused and his son back to the camp.[21]

At Camp Papa, the accused's son was handed over to Melchor as the accused was brought to another room. It was already late in the evening when his mother arrived at the camp. His son and his brother were allowed to leave with his mother.[22]

The accused claimed that the NARCOM agents were trying to extort money from them but he told his mother not to report the matter to the National Bureau of Investigation because he feared for his life. He also alleged that several agents had threatened him that P/Sr. Insp. Mabanag would kill if the latter could not get what he wanted. He accused them of manhandling him. He allegedly sustained abrasions and contusions, but the NARCOM agents denied his request for a medical treatment.[23]

On December 13, 1995, he was brought to Camp Crame in Quezon City. Again, he requested for medical treatment. His request was also denied because, according to the police, he already had a medical certificate, referring to the one that was taken before he was mauled.[24]

The accused denied that he talked to the confidential informant and to PO3 Castañeto at 5:00 p.m. on December 7, 1994. He claimed they could not have talked to him because he did not own a mobile phone and he did not have a telephone in his house. Allegedly, at that time, he was driving the red Nissan Sentra along MIA Road which he borrowed from his sister. He also denied that he gave the shabu to or received any money from PO3 Castañeto

because he did not know the latter or any of the NARCOM agents prior to his arrest. He insisted that he was intercepted at the corner of Russia and United Nations Streets, and not along Doña Soledad. He could not, however, think of any reason why they did so. Allegedly, except for Boyet, no one knew that he was going to Boyet's house in Syria Street. He claimed he would lodge a complaint against the arresting officers for his unlawful arrest and the illegal search of his house once his case is finished.

Thereafter, with the court's approval, the defense and the prosecution stipulated that, if called on the stand, the following witnesses, to wit: (1) Melchor Bongalon, brother of the accused; (2) Nonoy Ducca, a construction worker who allegedly witnessed the arrest of the accused; (3) Hilda Capuslanan, housemaid of the Bongalons; and (4) Marcela Bongalon, wife of the accused, would testify as follows:

Melchor Bongalon would testify that, on December 8, 1994, he went to the house of the accused and told the latter to return the Sega tapes that the accused borrowed from their friend, Boyet; that he and the son of the accused accompanied the latter in going to Boyet's house in Better Living, Parañaque; that NARCOM agents intercepted their vehicle at the corner of Ethi(o)pia Street and Doña Soledad Avenue; that there were no prohibited drugs taken from the accused; that they were brought to the NARCOM office in Bicutan and that in the evening of December 8, 1994, the NARCOM agents went to the house of the accused.[25]

Nonoy Ducca would testify that at about 3:00 p.m., on December 8, 1994, he was taking a snack along Russia Street in Better Living, Parañaque; that he was a worker at a nearby construction site; that he noticed armed men pointing their firearms at a vehicle and they forced its occupants to alight; that the occupants of the vehicle were asked again to board the same and one (1) of the armed men took the wheel and sped away; that he was twenty (20) meters away from the incident and that he recognized the driver of the vehicle who was intercepted by the armed men.[26]

Hilda Capuslanan would testify that on the night the accused was arrested, the NARCOM agents went to the house of the accused and ransacked the same; that they returned to the house of the accused on December 10, 1994 and did the same thing and that a case was then filed against the NARCOM agents before the PLEB.[27]

Marcela Bongalon, the wife of the accused, would testify that on December 8, 1994, at about 7:00 p.m., she was in their house when her husband, the accused, and the NARCOM agents arrived; that the NARCOM agents ransacked their house and took their personal belongings; that said officers returned on December 10, 1994 and did the same thing but she was not around at that time; that on December 8, 1994, Melchor Bongalon came to inform the accused to return the Sega tapes and that her son, the accused and Melchor Bongalon left their house after lunch.[28]

Finally, the defense presented as documentary exhibits the sketches of the scene of the incident prepared by PO3 Castañeto, PO3 Galos and the accused, marked as Exhibits 1, 2 and 3, respectively. Thereafter, the defense rested its case.

After the trial, the trial court found the accused guilty as charged. He was sentenced to suffer the death penalty and ordered to pay a fine of P1,000,000.00. The dispositive portion of its decision[29] reads:

“WHEREFORE, premises considered, judgment is hereby rendered finding the accused BALTAZAR BONGALON y MATEOS guilty beyond reasonable doubt of the offense of Violation of Section 15, Article III, of R.A. 6425, as amended by R.A. 7659, Section 15 in relation to number 3 Section 20 thereof, he is hereby sentenced to suffer the supreme penalty of DEATH and to pay a fine of ONE MILLION (P1,000,000.00) PESOS and to pay the costs.

The Methamphetamine Hydrochloride (Shabu) confiscated from the accused is ordered forfeited in favor of the Government and the Clerk of Court is directed without delay to turn over said item to the Dangerous Drug

Board.

SO ORDERED.”

The accused filed a Notice of Appeal.[30] Thereafter, he filed a Motion for Reconsideration/New Trial to present additional witnesses that included his 4-year old son, Mark Anthony.[31] The motion was denied by the trial court on the ground that the additional witnesses he offered to present were available during the trial proper of the case.[32] Subsequently, the accused filed several motions,[33] including a motion to inhibit,[34] but they were all denied. The trial court ordered the transmittal of the records of the case to this Court for automatic review.[35]

In the meantime, the accused filed a “MOTION FOR NEW TRIAL” with this Court.[36] Pursuant to our directive, the Office of the Solicitor General filed its Comment.[37] After considering their pleadings, we denied the motion for new trial for lack of merit.[38] The accused’s motion for reconsideration was also denied.[39] Finally, the appellant and the Solicitor General filed their respective briefs.[40]

The appellant contends that:

“I. THE TRIAL COURT ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THERE WAS A BUY-BUST OPERATION CONDUCTED BY THE NARCOM AGENTS AGAINST BONGALON AND THAT IT WAS A VALID ONE.

- THE TESTIMONIES OF PROSECUTION WITNESSES NOEL CASTAÑETO AND ROGELIO GALOS ON THE BUY-BUST OPERATION AGAINST BONGALON ARE NOT CREDIBLE.

- THE EVENTS AS BORNE OUT BY THE RECORDS OF THE CASE BELIE THE EXISTENCE OF A VALID BUY-BUST OPERATION.

- THERE WAS NO SHABU CONFISCATED FROM BONGALON AT THE TIME OF HIS UNLAWFUL WARRANTLESS ARREST.

- THE WARRANTLESS ARREST OF BONGALON IS (sic) UNLAWFUL AND THE TWO SEARCHES MADE ON HIS HOUSE ARE (sic) ALSO UNLAWFUL.

- THERE WAS NO BUY-BUST OPERATION BUT ONLY A PLAN TO EXTORT MONEY FROM BONGALON AND HIS FAMILY AND ROB THEM OF THEIR VALUABLES.

- THE PRESENCE OF MELCHOR BONGALON AND MARK ANTHONY BONGALON AT THE TIME OF THE WARRANTLESS ARREST OF BONGALON BELIE THE CLAIM OF THE NARCOM AGENTS THAT BONGALON WAS DEALING SHABU AT THE TIME OF SUCH ARREST.

- THE TESTIMONY OF BONGALON IS CREDIBLE BECAUSE IT WAS GIVEN IN A STRAIGHTFORWARD MANNER.

II. THE TRIAL COURT ERRED IN CONVICTING BONGALON OF THE VIOLATION OF SECTION 15, ARTICLE III, R.A. 6425, AS AMENDED BY R.A. 7659.

- THE SHABU ALLEGEDLY CONFISCATED FROM BONGALON AT THE TIME OF HIS UNLAWFUL WARRANTLESS ARREST IS INADMISSIBLE AS EVIDENCE.

- THE ACTS OF THE NARCOM AGENTS CONSTITUTE “INSTIGATION” RATHER THAN AN “ENTRAPMENT.”

- THE PROSECUTION HAS FAILED TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

III. THE HONORABLE PRESIDING JUDGE OF THE TRIAL COURT SHOULD HAVE INHIBITED

HIMSELF FROM FURTHER HANDLING THE CASE IN ORDER THAT BONGALON'S MOTION FOR RECONSIDERATION/NEW TRIAL SHOULD HAVE BEEN RESOLVED BY A NEUTRAL AND IMPARTIAL JUDGE.

IV. THE TRIAL COURT SHOULD HAVE APPROVED THE CONDUCT OF A NEW TRIAL IN ORDER THAT THE FACTS EVIDENCING THE EXTORTION AND ROBBERY PLAN OF MABANAG AND HIS MEN COULD HAVE BEEN TAKEN INTO CONSIDERATION IN DETERMINING THE GUILT OF BONGALON.

V. THE PENALTY OF DEATH AND FINE OF P1 MILLION IMPOSED BY THE HONORABLE COURT ON BONGALON ARE NOT THE PROPER PENALTIES TO BE IMPOSED."

We affirm the judgment of the trial court, with modification as to the fine imposed.

The appeal hangs mainly on the alleged lack of credibility of the prosecution witnesses and the frame-up-for-extortion theory.

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.[41]

To discredit the NARCOM agents involved in the buy-bust operation, the appellant points to certain facts that would allegedly prove that the operation was bogus, to wit:

- (1) There was no prior transaction between him and the poseur-buyer for him to immediately trust and do "business" with the latter, particularly when it involved a huge quantity of shabu.
- (2) The meeting place chosen, Doña Soledad Street, was very risky for a drug-dealer because it is a very busy street where people could easily observe and report to the police the exchange of shabu for money and the counting of money.
- (3) The NARCOM agents did not take certain measures in the conduct of the buy-bust operation, namely: (a) the buy-bust operation was not entered in NARCOM's blotter to prove that such plan exists; (b) there was no documentary proof that the informant and the poseur-buyer transacted with him through his mobile phone; (c) and despite the fact that the NARCOM agents had ample time to prepare for the operation, the buy-bust money was not treated with ultra-violet powder, thus, there was no fool-proof evidence of his receipt of the money.
- (4) The NARCOM agents who conducted the buy-bust operation committed material inconsistencies in their testimonies, particularly on the following: (a) the respective positions of their cars during the operation and how many vehicles were actually used; and (b) the buy-bust money used.
- (5) It was inconsistent with human behavior for him (the appellant) not to count the money at the time of the exchange since he had no prior transaction with the poseur-buyer and, conversely, for the poseur-buyer to just touch the package and conclude that it was shabu.
- (6) In his Affidavit, PO3 Castañeto stated that the operation in Doña Soledad was planned on December 7, 1994, however, in his testimony in court, he claimed that the meeting place and time was only set on December 8, 1994.
- (7) He was not alone during the arrest, thus negating the NARCOM agents' claim that he was dealing drugs at that time.

The factual issues raised by the appellant would not exculpate him.

At the outset, bare denials cannot prevail over the positive identification by the prosecution witnesses of the

appellant as the person who was in possession of, and who delivered the methamphetamine hydrochloride (“shabu”) to the poseur-buyer.[42] The prosecution witnesses, namely, PO3 Castañeto and PO3 Galos, testified that the Narcotics Command in Camp Ricardo Papa in Taguig received a report from an informant that the appellant was engaged in the illegal sale of shabu. Acting on the said tip, PO3 Castañeto was designated by P/Sr. Insp. Mabanag to lead the buy-bust operation team against the appellant. With the informant’s help, PO3 Castañeto negotiated with the appellant the possible purchase of 250 grams of shabu for P250,000.00. The next day, PO3 Castañeto called the appellant to confirm if their transaction would push through and the latter agreed to deliver the subject 250 grams of shabu. The appellant set their meeting place and time. As PO3 Castañeto did not know the appellant before the buy-bust operation, the informant accompanied him to the meeting place. The informant identified the red Nissan Sentra sedan driven by the appellant. It parked right in front of their car. The informant and PO3 Castañeto approached the appellant, had a brief conversation with the latter and, upon his request, showed him the money. The appellant gave the package containing the shabu to PO3 Castañeto upon receiving the boodle money. The sale of the shabu was consummated. PO3 Castañeto then gave the pre-arranged signal by waiving his left hand to the other members of the buy-bust team who immediately apprehended the appellant. Clearly, the appellant was arrested by virtue of a valid buy-bust operation.

A buy-bust operation is a form of entrapment that is resorted to for trapping and capturing felons in the execution of their criminal plan. The operation is sanctioned by law and has consistently proved to be an effective method of apprehending drug peddlers. Unless there is a clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[43]

We reject the frame-up theory of the appellant. It is incredible. The appellant did not offer any satisfactory explanation on why the NARCOM agents would single him out from among the many vehicles that passed via Doña Soledad and Russia Streets on that particular day just to frame him up and extort money from him. The records show that there was no prior surveillance conducted against the appellant. No evidence was presented if the NARCOM agents knew before his arrest that he could give a huge sum of money for the agents’ alleged extortion activity. What was established was that PO3 Castañeto became aware of the appellant’s illegal trade only a day before the buy-bust operation. In fact, the informant had to introduce first PO3 Castañeto to the appellant before the said poseur-buyer managed to negotiate the shabu deal with him. Even the appellant admitted that he did not know the NARCOM agents prior to his arrest. There was, therefore, no motive for them to frame him up. 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 appellant’s claim of having been framed.[44]

Even the claim that the appellant went to Better Living Subdivision in Parañaque to return the Sega tapes to his friend, “Boyet”, is unbelievable. In these times of electronic gizmos, the appellant would like us to believe that his brother, Melchor, came all the way from his house in Tondo just to tell him that Boyet, whose house was just a few minutes away from the appellant’s, would like to have his Sega tapes back. Although the appellant denied that he owned a mobile phone or a phone landline in his house, he admitted he has a pager. Inexplicably, Boyet opted to contact Melchor to relay the message to the appellant instead of just relaying it straight to the latter. The same holds true for Melchor, assuming that he did go to the appellant’s house.

We note, too, that despite the claim that Melchor was also in the car during the buy-bust operation, Melchor was inexplicably not charged in court along with his brother, the appellant. More perplexing is the allegation that the NARCOM agents would also take the appellant’s 4-year old son in Camp Papa while the latter was under investigation and, after they had searched his house, the NARCOM agents again took the child to Camp Papa and

not leave the child with his mother. To be sure, the appellant's scenario was so contrived that it goes against standard human behavior and experience.

As shown in the records, the prosecution has established with moral certainty all the elements necessary in every prosecution for the illegal sale of shabu, 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. The use of dusted money is not indispensable to prove the illegal sale of shabu. In fact, the absence of marked money does not create a hiatus in the evidence for the prosecution provided that the prosecution has adequately proved the sale.[45] Moreover, the fact that the appellant did not count the money first when he gave the shabu to PO3 Castañeto does not necessarily mean that the buy-bust operation was a sham. The NARCOM agent explained that after showing the boodle money with the genuine P500 bills to the appellant, the latter was satisfied that he readily gave the package of shabu to the former. The trial court correctly believed the NARCOM agent. We are convinced that what actually took place during the operation was, in street parlance, a "kaliwaan". There was nothing unusual about how the said transaction was consummated. It was done hurriedly—the giving of the "shabu" upon receipt of the money—precisely because the place of the exchange was a busy street and it would arouse the suspicion of bystanders and passersby if the appellant would be seen counting a huge sum of money.

For his exculpation, the appellant also points out that it was only in the morning of December 8, 1994 when PO3 Castañeto got the information on the price of the shabu and the place and time of the delivery. Thus, it was allegedly incredible that P/Sr. Insp. Mabanag could already organize the buy-bust team on December 7, 1994 and give details about the operation to be held in Doña Soledad on December 8, 1994. The appellant also focuses on certain inconsistencies in the sketches[46] drawn by PO3 Castañeto and PO3 Galos as to where they parked their respective cars and how many were used during the operation.

The appellant fails to persuade us. The records show that the December 8 conversation between the appellant and PO3 Castañeto was just a confirmation of their agreement regarding the sale of the shabu. Prior to that, the confidential informant had been talking to PO3 Castañeto's superior officer, P/Sr. Insp. Mabanag, regarding the illegal trade of the appellant and, on account of such report and the initial negotiations between the appellant and PO3 Castañeto, the buy-bust team was formed and briefed accordingly.[47]

As for the locations of the vehicles used by the NARCOM agents when it parked along Doña Soledad Street, such is a trivial matter that would not affect their credibility. Such a minor inconsistency strengthens, rather than weakens, the credibility of the witnesses as it erases any suspicion of a rehearsed testimony.[48] We deemed it more important that the prosecution witnesses' testimonies tallied on material points.

The appellant also cannot assail the validity of his arrest on account of the absence of a warrant. He was caught in flagrante delicto[49] selling shabu.[50] There was, therefore, no need for a warrant to effect his arrest pursuant to Section 5 (a), Rule 113 of the Revised Rules on Criminal procedure.[51] Said section provides:

"Sec. 5. Arrest, without warrant; when lawful—A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

xxx xxx xxx."

Moreover, the rule is that an accused is estopped from assailing the legality of his arrest if he failed to move to quash the information against him before his arraignment. Any objection involving the arrest or the procedure in the acquisition by the court of jurisdiction over the person of an accused must be made before he enters his plea,

otherwise, the objection is deemed waived.[52] Even in the instances not allowed by law, a warrantless arrest is not a jurisdictional defect, and objection thereto is waived where the person arrested submits to arraignment without objection. The subsequent filing of the charges and the issuance of the corresponding warrant of arrest against a person illegally detained will cure the defect of that detention.[53]

Next, the appellant claims that the search conducted in his house was unlawful. He also laments that the NARCOM agents robbed him of his personal properties during the search and they received money from his relatives after his arrest. This Court need not tarry on the validity of the said search for the appellant consented to the search. He admitted that he voluntarily accompanied the policemen to his house.[54] As for the charges of robbery and extortion, as in the alleged unlawful search made in his house, those incidents transpired after his arrest. Whether true or not, his liability for the unlawful sale of shabu remains.

As we have earlier stated, the appellant's denial cannot prevail over the positive testimonies of the prosecution witnesses. 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.[55]

The third and fourth issues need not be discussed at length as the same were already passed upon by this Court when it denied the appellant's Motion for New Trial for lack of merit.[56] We reiterate that the trial court did not err in denying the motion for new trial. Section 14, Rule 124 of the 1985 Rules on Criminal Procedure provides:

"Sec. 14. Motion for new trial.—At any time after the appeal from the lower court has been perfected and before the judgment of the appellate court convicting the accused becomes final, the latter may move for a new trial on the ground of newly discovered evidence material to his defense, the motion to conform to the provisions of Section 4, Rule 121."

A motion for new trial must be based on newly discovered evidence,[57] that is, the following must concur: (a) the evidence is discovered after trial; (b) such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) the evidence is material, not merely cumulative, corroborative, or impeaching and of such weight that, if admitted, could probably change the judgment. As aptly stated by the trial court, the testimony of the witness sought to be presented would serve only as impeaching and corroborative evidence. A new trial is justifiably denied where only impeaching evidence is sought to be introduced as the court had already passed upon the issue of credibility at the trial and where only corroborative evidence is to be offered as it would not change the result of the case.[58]

The fifth issue refers to the correctness of the death penalty imposed against the appellant. To avoid any injustice, we re-read the voluminous records of the case. We find that the records support the findings of the trial court.

Section 15 of Republic Act No. 7659 provides:

"Sec. 15. Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs.—The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug.

xxx xxx xxx."

Section 20, Article IV of R.A. No. 6425 was amended by Section 17 of R.A. No. 7659. It now provides as follows:

“Sec. 20. Application of Penalties, Confiscation and Forfeiture of Proceeds or Instrument of the Crime.—The penalties for offenses under xxx Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

xxx xxx xxx.

3. 200 grams or more of shabu or methylamphetamine hydrochloride;

xxx xxx xxx.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prison correccional to reclusion perpetua depending upon the quantity.”

It was established that the appellant sold 250.70 grams of shabu. The crime, according to the Information, was committed with the aggravating circumstance of use of motor vehicle.[59] It has been established that the appellant used a car in going to their meeting place and to transport the subject substance thus facilitating the commission of the crime.[60] There was no mitigating circumstance. Applying Section 15 in relation to Section 20 of R.A. No. 7659 and Article 63 of the Revised Penal Code, the penalty of death and a fine ranging from P500,000.00 to P10,000,000.00 should be imposed upon the appellant. Considering the quantity of the shabu involved in the case at bar, the fine of P1,000,000.00 is reduced to P500,000.00.[61]

Four (4) members of the Court maintain their position that R.A. No. 7659, insofar as it prescribes the death penalty, is unconstitutional. Nevertheless, they submit to the ruling of the Court, by a majority vote, that the law is constitutional and that the death penalty should be imposed accordingly.

IN VIEW WHEREOF, the decision of the Regional Trial Court of Parañaque (Branch 258) in Criminal Case No. 95-0973, sentencing appellant Baltazar Bongalon y Mateos to death for violating Section 15, Article III of R.A. No. 6425, as amended, is AFFIRMED, with modification that the fine imposed shall be reduced to P500,000.00. Costs against the appellant.

Pursuant to Section 25 of R.A. No. 7659, amending Section 83 of the Revised Penal Code, upon finality of this Decision, let the records of this case be forthwith forwarded to the Office of the President for possible exercise of pardoning power.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.

[1] Information, dated December 20, 1994, Original Records, vol. 1, p. 2.

[2] Original Records, vol. 1, pp. 25-26.

[3] TSN, PO3 Noel Castañeto, April 4, 1995, pp. 7-9.

[4] Id., pp. 9-11; Exhibit “H”, Original Records, vol. 3, p. 1231.

[5] TSN, PO3 Noel Castañeto, April 4, 1995, p. 39; Exhibits “E”, “F”, “F-1” and “F-3”, id., pp. 1229-1230.

[6] Exhibits “G” and “G-1”, id., vol. 2, p. 417; Exhibit “H”, id., vol. 3, p. 1231.

- [7] TSN, PO3 Noel Castañeto, April 4, 1995, pp. 12-14.
- [8] Id., pp. 18-19.
- [9] Id., April 18, 1995, pp. 66-68.
- [10] Id., April 4, 1995, pp. 18-25, 33-38.
- [11] TSN, PO3 Rogelio Galos, May 18, 1995, p. 24.
- [12] Exhibit "A", Original Records, vol. 3, p. 1226.
- [13] Exhibit "B", id., p. 1227.
- [14] TSN, Julita de Villa, March 16, 1995, p. 21.
- [15] TSN, Baltazar Bongalon, June 20, 1995, pp. 10-19.
- [16] Id., pp. 19-23.
- [17] Id., pp. 24-33.
- [18] Id., pp. 35-40.
- [19] Id., pp. 45-51.
- [20] Id., pp. 51-55.
- [21] Id., pp. 56-62.
- [22] Id., pp. 63-67.
- [23] Id., pp. 72-75.
- [24] Id., pp. 76-77.
- [25] Order, dated August 3, 1995, Original Records, vol. 5, pp. 2052-2053.
- [26] Ibid.
- [27] People's Law Enforcement Board Order, dated August 10, 1995, Original Records, vol. 5, pp. 2097-2098.
- [28] Ibid.
- [29] Rollo, pp. 201-213.
- [30] Original Records, vol. 5, p. 2277.
- [31] Id., pp. 2282-2300.
- [32] Id., p. 2360.
- [33] "MOTION FOR RECALL/SETTING ASIDE OF DENIAL OF MOTION FOR RECONSIDERATION AND MOTION FOR RECONSIDERATION OF DENIAL OF MOTION FOR NEW TRIAL," id., pp. 2362-2367, 2375-2377; "MOTION FOR PARTIAL RECONSIDERATION," id., pp. 2423-2425; MOTION FOR CLARIFICATION, Id., pp. 2423-2425.
- [34] Id., pp. 2405-2407.
- [35] Id., pp. 2412, 2418, 2434-2435, 2438.

- [36] Rollo, pp. 38-50.
- [37] Id., pp. 109, 122-140.
- [38] Resolution dated December 9, 1997, id., p. 142.
- [39] Id., pp. 142-151.
- [40] Id., pp. 163-198, 222-252.
- [41] People vs. Johnson, G.R. No. 138881, December 18, 2000; People vs. Uy, 327 SCRA 335 (2000).
- [42] People vs. Uy, 338 SCRA 232 (2000).
- [43] People vs. Uy, supra note 41.
- [44] Supra note 41.
- [45] People vs. Gireng, 241 SCRA 11, 16 (1995), citing People vs. Pascual, 208 SCRA 393 (1992) and People vs. Hoble, 211 SCRA 675 (1992).
- [46] Exhibits “1” and “2”.
- [47] TSN, PO3 Castañeto, April 4, 1995, pp. 8, 10-13; TSN, PO3 Galos, May 18, 1995, pp. 40-41.
- [48] People vs. Montano, 337 SCRA 608 (2000).
- [49] It means in the very act of committing the crime.
- [50] People vs. Uy, supra note 42.
- [51] People vs. Montano, supra.
- [52] People vs. Khor, 307 SCRA 295, 326-327 (1999); People vs. Hernandez, 282 SCRA 387 (1997); People vs. Mahusay, 282 SCRA 80 (1997).
- [53] Florenz D. Regalado, Remedial Law Compendium, Volume II, 7[th] Revised Edition (1995), p. 323.
- [54] TSN, Baltazar Bongalon, June 20, 1995, pp. 45-51. See People vs. Escaño, G.R. Nos. 129756-58, January 28, 2001.
- [55] People vs. Johnson, supra note 41; People vs. Uy, supra note 42.
- [56] Rollo, p. 142.
- [57] Ditcher vs. Court of Appeals, et al., 327 SCRA 301 (2000).
- [58] People vs. Villanueva, 339 SCRA 482 (2000).
- [59] Article 14, No. 20, Revised Penal Code, as amended.
- [60] People vs. Faco, 314 SCRA 505, 523 (1999).
- [61] People vs. Uy, supra.

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