

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMON CHUA UY, ACCUSED-APPELLANT.

G.R. No. 128046. March 07, 2000

Ponente: DAVIDE JR., C.J.

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DAVIDE JR., C.J.:

Ramon Chua Uy (hereafter RAMON) appeals from the decision[1] of the Regional Trial Court of Malabon, Branch 170, Metro Manila, in Criminal Cases No. 16199-MN and No. 16200-MN, which decreed him guilty of violating Sections 15 and 16 of Article III, R.A. No. 6425,[2] as amended, for the illegal sale of 5.8564 grams of methamphetamine hydrochloride or "shabu," and possession of 401 grams of the same drug, respectively.

RAMON was arrested in the evening of 11 September 1995 by the elements of the Anti-Narcotics Unit of the Philippine National Police in Malabon, Metro-Manila, in the course of a buy-bust operation[3] and a follow-up search of his residence, and was subsequently charged in three cases, namely, Criminal Case No. 16199-MN, Criminal Case No. 16200-MN and Criminal Case No. 16201-MN.

The accusatory portion of the Information[4] in Criminal Case No. 16199-MN alleges:

That on or about the 11th day of September 1995 in the Municipality of Malabon, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being a private person and without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver for and in consideration of the amount of P5,000.00 to SPO1 Alberto Nepomuceno, Jr. who acted as poseur buyer white crystalline substance contained in a sealed plastic bag with markings with net weight of 5.8564 grams which substance when subjected to chemistry examination gave positive results for Methamphetamine Hydrochloride otherwise known as "Shabu" which is a regulated drug.

CONTRARY TO LAW.

The accusatory portion of the Information[5] in Criminal Case No. 16200-MN charges:

That on or about the 11th day of September 1995 in the Municipality of Malabon, Metro-Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused being a private person and without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control white crystalline substance separately contained in five (5) sealed plastic bags all with markings with total net weight 401 grams which substance when subjected to chemistry examination gave positive results for Methamphetamine Hydrochloride otherwise known as 'shabu' which is a regulated drug.

CONTRARY TO LAW.

In Criminal Case No. 16201-MN, RAMON was charged with the illegal possession of "traces" of shabu found on three (3) plastic scoops and other drug paraphernalia which were seized from his supposed residence in a follow-up search.

No bail was recommended. When arraigned, RAMON pleaded not guilty in each case.[6] During the pre-trial, the

parties agreed on a joint trial and to dispense with the testimony of Forensic Chemist Loreto F. Bravo.[7] They also agreed on the marking of the exhibits for the prosecution.

At the trial, the prosecution presented as witnesses SPO1 Alberto G. Nepomuceno, Jr., who acted as the poseur-buyer, and SPO4 Eddie Regalado, another member of the buy-bust team, as rebuttal witness. The defense presented RAMON and Maritess Puno.

The trial court summarized the prosecution's evidence, thus:

The evidence on record shows that at around 5:00 o'clock in the afternoon of September 11, 1995, a female confidential informant personally informed the members of the Anti-Narcotics Unit of the Malabon Police Station, which was then holding office at Barangay Concepcion, Malabon, Metro-Manila, that accused Ramon Chua Uy "alias Chekwa" had asked her to look for a buyer of shabu at a price of P1,000.00 per gram. Acting on the given information, the members of the unit subsequently planned a buy-bust operation against the accused.

SPO4 Eddie Regalado instructed the confidential informant to consummate a deal with the accused by telling him that a prospective buyer is willing to purchase five (5) grams of the illicit drug to be delivered in front of the Justice Hall of Malabon located along Sanciango Street, Barangay Catmon. At 6:30 p.m., the confidential informant called up and informed the police officers that accused Chua Uy already agreed on the transaction as well as to the place of delivery. P/Insp. Ricardo Aquino, Chief of the Narcotics Unit, at once formed the buy-bust team composed of SPO4 Federico Ortiz and PO1 Joel Borda. After securing five (5) P1,000.00-peso bills to be used in the operation from P/Insp. Aquino, SPO4 Regalado have (sic) them photocopied, after which, [he] affixed his signatures (sic) on each of the xerox copies although the serial number of the bills were previously recorded.

The group then proceeded to Barangay Catmon at about 7:00 p.m., with SPO1 Nepomuceno designated to act as the poseur buyer. When they reached the place, SPO1 Nepomuceno first went to a store near the tennis court while the rest of the team positioned themselves in strategic locations. At 8:20 of the same evening, SPO1 Nepomuceno saw a white Toyota car came to a stop. Their confidential informant immediately stepped out of the car and approached SPO1 Nepomuceno and ordered him to board the vehicle. Once inside, SPO1 Nepomuceno caught sight of the driver and the other male companion of accused Chua Uy through the back seat where he and the accused together with the confidential informant were seated. After a few minutes conversation, accused Chua Uy opened up his brown attaché case and ensuingly handed over to SPO1 Nepomuceno five (5) grams of 'shabu' placed in a transparent plastic packet. In exchange for the substance, SPO1 Nepomuceno delivered the five (5) P1,000-peso bills which accused Chua Uy put in his right front pocket. SPO1 Nepomuceno then simply opened the rear right door of the car and lighted a cigarette as pre-arranged signal. SPO4 Regalado and PO3 Ortiz consequently closed in on the vehicle. Thereupon, SPO1 Nepomuceno introduced himself and informed the accused of his constitutional rights before placing him under arrest. He later turned over to SPO1 Regalado the five (5) grams of 'shabu' (Exh. "E"- Crim. Case No. 16199-MN). Thereafter, SPO4 Regalado and PO3 Ortiz seized the brown attaché case from accused Chua Uy which yielded five (5) more plastic packets of "shabu," (Exhs. "D" to "D-4" -- Crim. Case No. 16200-MN), along with several drug paraphernalia. SPO4 Regalado likewise recovered the buy-bust money from the accused after the consummated (sic) transaction, (Exhs. "K" to "K-4"). The one packet of suspected "shabu" which was the subject of the sale including the five (5) packets of the same substance, taken from the brown attaché case, bearing the respective initials of SPO4 Regalado and SPO1 Nepomuceno were brought to the NBI Forensic Division. Laboratory examination of the pieces of evidence shows positive result for methamphetamine hydrochloride, a regulated drug (Exh. "C").

The team brought accused Chua Uy to their office where he was referred to SPO2 Vicente Mandac for proper investigation. In the course thereof, it was learned that there were still undetermined quantity of shabu left at the residence of the accused at No. 402 Gen. Vicente St., San Rafael Village, Navotas, Metro Manila.

Forthwith, SPO4 Regalado applied on the following day for a search warrant before this Court to lawfully search the said premises of the accused for methamphetamine hydrochloride (Exh. "I"). During the search and in the presence of Bgy. Kagawad George So and Rodolfo Salvador including Maritess Puno, the alleged owner of the house and live-in partner of accused Chua Uy, the team was able to confiscate assorted articles intended for the repacking of the regulated drug (Exh. "I-1"). SPO1 Nepomuceno identified them as follows: one (1) white plastic scoop; one (1) blue plastic scoop; one (1) tangerine plastic scoop; one (1) Selecta ice cream cup; and one (1) white plastic container (Exhs. "G," "G-1," "G-2," "H and "H-1"). All the items were marked by SPO1 Nepomuceno with his initials "AGN." Along with the aforesaid articles were three (3) pieces of plastic scoops and two (2) plastic glasses (sic) with traces of "shabu." Laboratory examination made on them gave positive result for the presence of methamphetamine hydrochloride, a regulated drug (Exhibit "F"- Crim. Case No. 16200-MN). These antecedent facts which lead to the filing of the present cases against accused Chua Uy are embodied in the sworn affidavit of SPO1 Nepomuceno marked and offered in evidence as Exh. "J."

SPO4 Eddie Regalado corroborated the testimony of SPO Nepomuceno, claiming that he was positioned fifteen (15) to twenty (20) meters away when he saw SPO1 Nepomuceno entered the white Toyota car at the time of the operation. He further went to say that a caliber 9mm pistol was also recovered from accused Chua Uy but considering that up to now they have not received any certification from the Firearms and Explosives Unit, showing whether accused is authorized to carry firearm, no case has yet been filed against the latter. Further, SPO4 Regalado said that accused Chua Uy has admitted to him that he is just a neophyte in the illegal trade.[8]

RAMON's version of the incident is also faithfully summarized by the trial court, thus:

Accused Chua Uy claimed his innocence by insisting that the quantity of the illicit drug allegedly seized from him were merely "planted" by the police officers.

He stated that he has been in the business of manufacturing t-shirts and selling them in different places for almost fifteen (15) years already. That on the date of the incident at issue, it took him up to 7:30 to 8:30 in the evening to return home because he had made deliveries and had collected bigger amount of money. On board his L300 delivery van together with his driver and while they were about to enter the house, he saw a white Toyota Corolla car parked in front of the gate. A man, whom he identified as a certain Arnold, alighted from the car and approached them. Arnold was offering the said car for sale to him at a cheaper price but he declined the offer inasmuch as he already owns a van. Due to the persistence of Arnold, he agreed to test drive the vehicle bringing along with him his attache case containing the day's collection. With Arnold on the wheel, they traversed the interior alley of Dela Cruz then came out at M.H. del Pilar and proceeded to J. Alex Compound before turning to Gov. Pascual Ave., on their way back to his house. At the junction of Justice Hall Street and Gov. Pascual Ave., somebody blocked their car. Arnold lowered his side window and inquired what was it all about. Although he did not quite understand the conversation, he overheard that it was a "police bakal." When Arnold informed him that they will have to go along with the man to the police headquarters, two other men boarded their car while an owner jeep followed them from behind.

Reaching the headquarters, Arnold and the two men went inside while he was left behind inside the car. Soon after, one of the two returned to him and insisted in getting his attache case. He refused at first to surrender the same but had to give up on account of the persistence exerted on him. Ten minutes later, a man ordered him to go inside the headquarters and likewise asked him why there was "shabu" in his attache case. He denied owning the "shabu" and tried to look for Arnold who was no longer around. He even inquired how his attache case was opened considering that the key was still with him. Finally, he was dragged inside the headquarters where he saw his attache case already thrown wide. He again reiterated his earlier query and tried to look for his money but instead he was informed about the "shabu" found inside his attache case which he, nonetheless, denied ownership. The man who earlier stopped them and those inside the headquarters, who were forcing him to admit ownership of the "shabu" told him that they were policemen. Furthermore, he recalls that aside from some documents, list of collections, checks, check booklets and 9 mm pistol, his attache case contained

P132,000.00 which he was able to collect from different persons. Only a bundle consisting of P20.00 peso bills was left while the rest of his money comprising of bundles of P10, P20, P100, P500 and P1,000 peso bills were already missing.[9]

Maritess Puno, the other defense witness, testified on the events which transpired during the follow-up search by the police of RAMON's suspected house at No. 402 Gen. Vicente Street, San Rafael Village, Navotas, and on the fact that she knew RAMON.[10]

On rebuttal, SPO4 Regalado reiterated that the five (5) transparent plastic bags of "shabu" were indeed found inside RAMON's confiscated attache case and that they recovered therefrom only P20-peso bills amounting to P2,200 and not P1,000-peso bills as RAMON claims.[11]

In its decision,[12] dated 10 December 1996, the trial court found credible the testimonies of the witnesses for the prosecution and its evidence to have established beyond reasonable doubt the culpability of RAMON in Criminal Cases Nos. 16199-MN and 16200-MN. It acquitted him in Criminal Case No. 16201-MN. It then decreed:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 16199-MN, the Court finds accused RAMON CHUA UY guilty beyond reasonable doubt of [v]iolation of Section 15, Article III of Republic Act No. 6425, amended by Republic Act No. 7659, and hereby sentences him to suffer an indeterminate penalty of six (6) months of arresto mayor, as minimum, to four (4) years and two (2) months of prision correccional as maximum plus the cost of the suit;
2. In Criminal Case No. 16200-MN, [t]he Court finds accused RAMON CHUA UY guilty beyond reasonable doubt of [v]iolation of Section 16, Article III of Republic Act No. 6425, as amended by Republic Act 7659, and considering that the quantity of methamphetamine hydrochloride is more than 200 grams, there being no mitigating or aggravating circumstance, hereby sentences him to suffer imprisonment of reclusion perpetua and to pay a fine of Five Hundred Thousand Pesos (P500,000.00), plus the cost of the suit; and
3. In Criminal Case No. 16201-MN, accused RAMON CHUA UY is hereby ACQUITTED for lack of sufficient evidence.

The trial court gave credence to the prosecution's story of a legitimate buy-bust operation; declared that poseur-buyer SPO1 Nepomuceno creditably testified as to how the sale took place inside the white Toyota car of RAMON and that his testimony "was amply corroborated" by SPO4 Regalado. It held that RAMON's entrapment and arrest were not effected in a haphazard way with the police undertaking "the rigors of planning" the buy-bust operation. The presumption that they regularly performed their duty was not rebutted by proof of any ulterior motive. It concluded that the prosecution has proved with certainty all the elements necessary for the crime of illegal sale of methamphetamine hydrochloride, and since RAMON was caught in flagrante delicto selling a regulated drug, his warrantless arrest was valid and the seizure of five (5) more packets of shabu weighing 401 grams (Exhibits "D" to "D-4") from the confiscated attache case of RAMON was justified and legal in light of the prevailing rule that an officer making an arrest may take from the person arrested any property found upon his person in order to find and seize things connected with the crime. The trial court also cited the confirmation by the NBI's Forensic Division Chemist, Loreto F. Bravo, that the packets of shabu bought and seized from RAMON, was tested positive for methamphetamine hydrochloride, a regulated drug (Exhibit "C").

The trial court was not convinced of RAMON's claim of innocence and frame up. It doubted his tale that when arrested, he was just test-driving the car of a certain Arnold, and that he was carrying P132,000 in various denominations inside his attache case which the police did not account for. It also dismissed as trivialities RAMON's attack on the existence and preparation of the buy-bust money and lack of prior surveillance, since a police report listing the names of the donors of the money used by the police to finance its anti-drug operation, the

marking of the buy-bust money itself, and prior surveillance are not indispensable to the conduct of a buy-bust operation, as long as the sale of the dangerous drugs is adequately proven.

Unsatisfied, RAMON appealed from the decision. In view of the penalty of reclusion perpetua imposed in Criminal Case No. 16200-MN, the appeal is now before us.

In his Appellant's Brief, RAMON submits that the trial court erred (1) in giving credence to the testimony of the prosecution witnesses and in disregarding the evidence for the defense; and (2) in finding him guilty beyond reasonable doubt of the crimes of drug pushing and drug possession. He assails the credibility of the testimony of the prosecution witnesses on the buy-bust operation, contending that the price of P1,000 for a gram of shabu is "so exorbitant"[13] as to be in credible and claims that the police officers only made it to appear that the price was exactly P1,000 per gram because there were P1,000-peso bills among the P132,000 which they got from his attache case. He insists that he is a legitimate garments businessman who need not resort to selling illicit drugs to make money; in fact, he was carrying his day's collection amounting to P132,000 when accosted by the police in the evening of 11 September 1995. Thus, the female confidential agent/police informer should have testified in court to prove her claims against him.

Finally RAMON submits that without the testimony of NBI Forensic Chemist, the prosecution's case "falls to pieces." Bravo's testimony cannot be waived since only he could say whether the substance allegedly seized is indeed shabu, and also determine its actual weight upon which depends the penalty to be imposed. Thus, whatever he said in his report is hearsay and hearsay evidence, whether objected to or not, has no probative value. He insists that at the pretrial he did not waive the testimony of the chemist but only "stipulated on the markings of the prosecution's evidence."

In the Appellee's Brief, the Office of the Solicitor General (OSG), urges us to affirm RAMON's conviction. It agrees with the trial court's assessment of the credibility of the witnesses for the prosecution. The price of shabu at P1,000 per gram is not incredible. It was the price quoted by the informant, prompting the buy-bust team to prepare five (5) P1,000-peso bills which they actually paid to RAMON but later recovered. The Tranca and Ong cases[14] cited by RAMON cannot be relied upon because the price of shabu or any illegal drugs for that matter is determined by the law of supply and demand, not by law or jurisprudence. Besides, the amount of shabu sold to the poseur buyer in Tranca for P100 was only 0.06 gram; while in Ong, the price of P650 per kilo of shabu involved transactions done way back in March, 1993. It is then neither impossible nor improbable for the street price of shabu to reach P1,000 per gram in 1995 when the illegal sale was committed in this case since the price of illegal drugs are not fixed, but determined by its availability on the street and the demand of users. Secondly, RAMON's avowal that he is a legitimate garments businessman who need not earn money the illegal way is purely self-serving, since the members of the Malabon Police Anti-Narcotics Unit caught him in the act of selling shabu to a member of the buy-bust team and further carried 401 grams more of shabu inside his attache case. Finally, the police informer need not be presented to establish the buy-bust since it was not she but the police who caught RAMON in the act of selling and possession of shabu. Her presentation is neither essential nor indispensable for RAMON's conviction, since her testimony would be merely corroborative and cumulative.[15]

On the non-presentation of Loreto Bravo, the NBI forensic chemist, the OSG argues that Bravo's finding that the drugs seized from RAMON were indeed the regulated methamphetamine hydrochloride or shabu, is not hearsay. Bravo did not testify anymore because the parties agreed during the pre-trial to dispense with his testimony. RAMON never objected to the order. Neither did he move to reconsider it. The facts thus stipulated and incorporated in the pre-trial order bound him.[16] Moreover, at the trial RAMON never raised the question of the non-presentation of the forensic chemist; what his counsel objected to was with respect to the presentation and identification of the shabu wherein defense objected to the irregular act of showing the confiscated drug to SPO1

Nepomuceno without laying the basis therefor.[17] The defense counsel did not also object to the direct examination of SPO4 Regalado concerning the whereabouts and identification of the subject shabu.

We find no merit in this appeal.

A buy-bust operation is a form of entrapment whereby ways and means are resorted for the purpose of trapping and capturing lawbreakers in the execution of their criminal plan; it is a procedure or operation sanctioned by law and which has consistently proved itself to be an effective method of apprehending drug peddlers, and 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 testimony on the operation deserved full faith and credit.[18] As has been repeatedly held, credence shall be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary; moreover in the absence of proof of motive to falsely impute such a serious crime against appellant, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated claim of having been framed.[19]

We, of course, are aware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.[20] But the defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties.[21] Moreover, the defense of denial or frame-up, like alibi, has been viewed by the court with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecutions for violation of the Dangerous Drugs Act.[22]

In the cases at bar, our review of the testimonies of the prosecution witnesses yields no basis to overturn the trial court's findings on their credibility. As correctly noted by the trial court, there is no evidence of any improper motive on the part of the police officers who conducted the buy-bust operation. RAMON has not even tried to suggest any ulterior motive.

We are convinced that in the evening of 11 September 1995, an honest- to- goodness entrapment operation against RAMON was conducted by the team composed of the local Anti-Narcotics Unit's Chief himself, Police Inspector Ricardo Aquino, OIC, SPO4 Eddie Regalado, PO Alberto G. Nepomuceno, PO3 Federico Ortiz and PO1 Joel Borda.[23] Nepomuceno, the poseur-buyer had not seen RAMON before, although he had previous background information about RAMON. Nepomuceno conducted surveillance on RAMON.[24]

The price of P1,000 per gram of shabu paid by the "poseur-buyer" Nepomuceno to RAMON cannot be considered "so exorbitant" as to render the account of the buy-bust improbable. In fact, in a buy-bust operation conducted by the policemen in Sampaloc, Manila on 5 July 1995, or more than a month earlier, P500 only fetched 0.395 gram of shabu,[25] which meant that the selling price then was already more than P1,000 for a full gram of shabu.

As to the buy-bust money, Nepomuceno categorically stated that after receiving the information from their informant, Police Inspector Ricardo Aquino, Chief of the Anti-Narcotic Unit, formed a team to conduct a buy-bust operation "and prepared marked money worth P5,000 in P1,000 denomination and instructed [him] to act as poseur buyer in the operation." They photocopied (xeroxed) them and "got the serial numbers." After the operation, they submitted them to the prosecutor's office.[26] Nepomuceno underwent grueling cross-examination by defense counsel[27] but he never wavered on his testimony on the conduct of the buy-bust operation. On cross-examination, Nepomuceno revealed that the source of their buy-bust money is Mayor Amado S. Vicencio.[28]

The failure to present the informer did not diminish the integrity of the testimony of the witnesses for the prosecution. Informers are almost always never presented in court because of the need to preserve their invaluable service to the police.[29] Their testimony or identity may be dispensed with since his or her narration would be merely corroborative, as in this case, when the poseur- buyer himself testified on the sale of the illegal drug.[30]

On the other hand, RAMON only offered an unsubstantiated tale of frame-up. He did not even present his own driver named "Lolong" to corroborate his tale.

As against the positive testimonies of the prosecution witnesses that they caught RAMON in a buy-bust operation, supported by other evidence such as the packets of shabu sold by and seized from him, RAMON's negative testimony must necessarily fail. An affirmative testimony is far stronger than a negative testimony, especially when it comes from the mouth of credible witness.[31]

Since RAMON was caught in flagrante selling shabu, the trial court correctly ruled that his warrantless arrest and the seizure of his attache case containing more shabu was also valid and lawful.[32] Besides, RAMON never raised, on constitutional grounds, the issue of inadmissibility of the evidence thus obtained.

We now address RAMON's contention that since the NBI Forensic Chemist did not testify, his findings that the specimens submitted to him were indeed shabu and weighed so much, are hearsay and leave the evidence of the prosecution insufficient to convict. RAMON's premise is that at the pre-trial he did not waive the Forensic Chemist's testimony but only "stipulated on the markings of the prosecution's evidence." Indeed, the records disclose that during the pre-trial, conducted immediately after the arraignment on 21 November 1995, RAMON, duly represented by counsel de parte Atty. Gerardo Alberto,[33] and the prosecution stipulated on the markings of the prosecution's exhibits, and agreed to dispense with the testimony of Forensic Chemist Loreto F. Bravo. Thereafter the trial court issued a Joint Order, which embodies its ruling granting the motion of the trial prosecutor for the joint trial of the two cases and the withdrawal of the motion for reinvestigation by RAMON's counsel; RAMON's plea of not guilty in each case; and the proceedings at the pre-trial. As to the latter, the Joint Order states:

During the pre-trial, prosecution and defense agreed to stipulate on the markings of the following prosecution's exhibits, thereby dispensing with the testimony of Forensic chemist Loreto E. Bravo, to wit:

Exhibit "A" - Letter request;

Exhibit "B" - Preliminary report;

Exhibit "B-1" - Signature of forensic Chemist;

Exhibit "C" - Final Report for Chemical cases Nos. 16199 and 16200;

Exhibit "C-1" - Signature of Forensic Chemist in said Report;

The five (5) plastic bags with markings containing methamphetamine hydrochloride with a total weight of 401 grams will be marked as follows:

Exhibit "D" - Plastic bag with letter A;

Exhibit "D-1" - Plastic bag with letter B;

Exhibit "D-2" - Plastic bag with letter C;

Exhibit "D-3" - Plastic bag with letter D;

Exhibit "D-4" - Plastic bag with letter E;

Exhibit "E" - One (1) plastic sachet with methamphetamine hydrochloride with a total weight of 5.8564 grams;

Exhibit "F" - Another Final report for Criminal Case No. 16201;

Exhibit "F-1" - Signature of Chemist in said report;

The three (3) pieces of plastic scoop and two (2) plastic containers with markings containing residue of methamphetamine hydrochloride will be marked as follows:

Exhibit "G" - Plastic scoop color white;

Exhibit "G-1" - Plastic scoop color blue;

Exhibit "G-2" - Plastic scoop color tangerine;

Exhibit "H" - Selecta ice cream plastic cup;

Exhibit "H-1" - White plastic container;

By agreement of the prosecution and defense, set the presentation of evidence for the prosecution on January 8, 9, 11 and 15, 1996; whereas evidence for the defense will be on January 18, 22 and 25, 1996, all at 1:30 o'clock in the afternoon.[34]

It may at once be noted that neither RAMON nor his counsel made express admission that the contents of the plastic bags to "be marked" as Exhibits "D," "D-1," "D-2," "D-3," "D-4," and "E" contain methamphetamine hydrochloride. That RAMON agreed to dispense with the testimony of Forensic Chemist Bravo may not be considered an admission of the findings of Bravo on the contents of the plastic bag. Strictly, from the tenor of the aforequoted portion of the Joint Order, it is clear that RAMON and his counsel merely agreed to the marking of the exhibits, and the clause "thereby dispensing with the testimony of forensic Chemist Loreto E. Bravo" must be understood in that context.

Even granting for the sake of argument that RAMON admitted during the pre-trial that Exhibits "D" to "D-4," inclusive, and Exhibit "E" contained methamphetamine hydrochloride, the admission cannot be used in evidence against him because the Joint Order was not signed by RAMON and his counsel. Section 4 of Rule 118 of the Rules of Court expressly provides:

SEC. 40. Pre-trial agreements must be signed. No agreement or admission made or entered during the pre-trial conference shall be used in evidence against the accused unless reduced to writing and signed and his counsel.[35]

Put in another way, to bind the accused the pre-trial order must be signed not only by him but his counsel as well. The purpose of this requirement is to further safeguard the rights of the accused against improvident or unauthorized agreements or admissions which his counsel may have entered into without his knowledge, as he may have waived his presence at the pre-trial conference;[36] eliminate any doubt on the conformity of the accused to the facts agreed upon.[37]

Nevertheless, RAMON cannot take advantage of the absence of his and his counsel's signatures on the pre-trial order. When the prosecution formally offered in evidence what it had marked in evidence during the pre-trial, RAMON did not object to the admission of Bravo's Preliminary Report (Exh. "B"), Final Report (Exh. "C"), another Final Report (Exh. "F"), and of the plastic bags (Exhibits "D" to "D-4" inclusive, and "E").

When asked to comment on the exhibits formally offered, RAMON's counsel merely stated:

ATTY. DOMINGO:

No objection to these exhibits Your Honor only insofar as to form part of the testimony of the witness/ es who testified and identified said exhibits and only insofar or in accordance with the stipulations the prosecution and the defense had entered into during the pre-trial stage of the proceedings.[38]

In its offer of the exhibits, the prosecution explicitly described what the foregoing exhibits was and the purposes for which they were offered, thus:

FISCAL ALIPOSA:

We are now offering in evidence the following:

Exhibit "A", is the letter-request;

Exhibit "B", the preliminary report;

Exhibit "B-1", signature of the forensic chemist;

Exhibit "C", final report of Crim. Case Nos. 16199-MN and 16200-MN;

Exhibit "C-1", the signature of forensic chemist;

These exhibits are being offered to establish the fact that after the apprehension of the accused, the necessary request was prepared and findings in the preliminary and final reports are both positive for shabu or methamphetamine hydrochloride.

Exhibits "D", "D-1", "D-2", "D-3", and "D-4", are plastic packs of shabu found inside the attache case opened while inside the vehicle of the accused together with the prosecution witness in the course of the buy-bust operation;

Exhibit "E" is the 5.84 grams of shabu which was the subject of the buy-bust operation;

Exhibit "F" and "F-1", final report and signature of the forensic chemist in Crim. Case No. 16201-MN, showing the specimen examined to be positive for shabu;

xxx

We likewise offered these exhibits as part of the testimony of the witness or witnesses who testified thereon Your Honor.[39]

In addition to the foregoing admission by RAMON of the prosecution's exhibits, he likewise never raised in issue before the trial court the non-presentation of Forensic Chemist Bravo. RAMON cannot now raise it for the first time on appeal. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[40] The familiar rule in this jurisdiction is that the inadmissibility of certain documents upon the ground of hearsay if not urged before the court below cannot, for the first time, be raised on appeal.[41] In *U.S. v. Choa Tong*[42] where the defense counsel did not object to the form or substance of a laboratory report that the specimen submitted was opium, the Court ruled that "[t]he objection should have been made at the time the said analysis was presented."

In *People v. Dela Cruz*,[43] the Court rejected the appellant's contention that the biology report of the NBI forensic chemist was inadmissible for being hearsay because the forensic chemist was not presented in court, and held, noting that the report was not objected to as such in his comments or objections to the prosecution's formal Offer of Evidence, that "[e]very objections to the admissibility of evidence shall be made at the time such evidence is offered, or as soon thereafter as the ground for objection shall have become apparent, otherwise the objection shall be considered waived.

Finally, as to the reports of Forensic Chemist Bravo, it must be stressed that as an NBI Forensic Chemist, Bravo is a public officer, and his report carries the presumption of regularity in the performance of his function and duty. Besides, by virtue of Section 44, Rule 130, entries in official records made in the performance of office duty, as in the case of the reports of Bravo, are prima facie evidence of the facts therein stated. We are also aware that "the test conducted for the presence of 'shabu' (infrared test) is a relatively simple test which can be performed by an average or regular chemistry graduate" and where "there is no evidence... to show that the positive results for the presence of methamphetamine hydrochloride ('shabu') are erroneous... coupled with the undisputed presumption that official duty has been regularly performed, said results" may "adequately establish" that the specimens submitted were indeed shabu.[44]

In sum, in Criminal Case No. 16199-MN we are convinced that the prosecution's evidence more than proved beyond reasonable doubt all the elements necessary in every prosecution for the illegal sale of shabu, to wit: (1) identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[45] The delivery of the contraband to the poseur-buyer and the receipt of the marked money successfully consummated the "buy-bust" transaction between the entrapping officers and the accused.[46] What is material in a prosecution for illegal sale of prohibited drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti.[47]

There is also no doubt that the charge of illegal possession of shabu in Criminal Case No. 16200-MN was proven beyond reasonable doubt since RAMON knowingly carried with him more than 400 grams of shabu without legal authority at the time he was caught during the buy-bust operation. The penalty imposed, namely, reclusion perpetua and fine of P500,000 is in order pursuant to People v. Simon.[48]

WHEREFORE, the appealed decision of the Regional Trial Court of Malabon, Branch 170, in Criminal Case No. 16199-MN and Criminal Case No. 16200-MN, is hereby affirmed in toto.

Costs de officio.

SO ORDERED.

Puno, Kapunan, Pardo, and Ynares-Santiago, JJ., concur.

[1] Per Judge Benjamin J. Antonio; Original Record (OR), Criminal Case No. 16199-MN, 305-315; Rollo, 47- 57. All references to the record pertain to the said case, unless indicated otherwise.

[2] The Dangerous Drugs Act of 1972.

[3] Affidavit of SPO1 Alberto G. Nepomuceno, Jr., and Joint Affidavit of Arrest of SPO4 Eddie S. Regalado, PO3 Federico Ortiz and PO1 Joel E. Borda. OR, 3-5.

[4] OR, 1-2.

[5] Id., Criminal Case No. 16200-MN, 1-2.

[6] OR, 21.

[7] Joint Order of 21 November 1995, 1; OR, 21-22.

[8] Joint Decision, 2-5; OR, 306- 309; Rollo, 48-51.

[9] Joint Decision, 5-6; OR, 309- 310; Rollo, 51-52.

[10] TSN, 19 September 1996, 3-10; OR, 291-298.

[11] TSN, 22 October 1996, 2-5; OR, 300-303.

[12] Supra note 1.

[13] Citing the cases of People v. Tranca , 235 SCRA 455 [1994], and People v. Ong, 245 SCRA 733 [1995],

where the price of shabu was only P100 for 1.1 grams, and P650 for one kilo, respectively.

[14] *Supra* note 13.

[15] Citing *People v. Ballagan*, 247 SCRA 535 [1995].

[16] *People v. Abelita*, 210 SCRA 497, 501-502 [1992].

[17] TSN, 14 March 1993, 7-8, 12.

[18] *People v. Gaco*, 222 SCRA 49 [1993]; *People v. Garcia*, 235 SCRA 371 [1994].

[19] *People v. Alhambra*, 233 SCRA 604 [1994].

[20] *People v. Pagaura*, 267 SCRA 17 [1997]; *People v. Bagus*, 277 SCRA 157, 172 [1997].

[21] *People v. Dichoso*, 223 SCRA 174 [1993]; *People v. Constantino*, 235 SCRA 384 [1994]; *People v. Tranca*, 235 SCRA 455 [1994].

[22] *People v. Lacabanes*, 270 SCRA 193 [1997]; *People v. Alegro*, 275 SCRA 216 [1997]; *Manalili v. Court of Appeals* [1997]; *People v. Enriquez*, 281 SCRA 103 [1997].

[23] TSN, 14 March 1996, 6.

[24] *Id.*, 5-6.

[25] *People v. Juatan*, 260 SCRA 532, 534-535 [1996].

[26] TSN, 14 March 1996, 4-5, 6.

[27] TSN, 18 April 1996, 3-17; OR, 206-220; 16 May 1996, 2-20; OR, 222-241.

[28] TSN, 18 April 1996, 7-8; 16 May 1996, 210-211.

[29] *People v. Marcelo*, 223 SCRA 24 [1993].

[30] *People v. Tranca*, 235 SCRA 455 [1994].

[31] *People v. Ramirez*, 266 SCRA 335 [1997].

[32] *People v. Sibug*, 229 SCRA 489 [1994].

[33] OR, 15.

[34] OR, 21-22.

[35] Section 3 of R.A. No. 8493, otherwise known as The Speedy Trial Act of 1998, provides:

Sec. 3. Pre-Trial Agreement. -- All agreements or admissions made or entered into during the pre-trial conference shall be reduced to writing and signed by the accused and counsel, otherwise the same shall not be used in evidence against the accused. The agreements in relation to matters referred to in Section 2 hereof is subject to the approval of the court: Provided, That the agreement on the plea of the accused to lesser offense may only be revised, modified or annulled by the court when the same is contrary to law, public morals or public policy.

[36] REGALADO, Florenz, D., *Remedial Law Compendium*, vol. 2 (7th revised ed.), 423.

[37] PAMARAN, Manuel, *The 1985 Rules on Criminal Procedure Annotated*, 1998 ed., 391.

[38] TSN, 18 July 1996, 4; OR, 267.

[39] TSN, 18 July 1996, 2-3, 4; OR, 265-267.

[40] FRANCISCO, VICENTE J., 1 *The Revised Rules of Court*, Vol. 1, Part II, 1997 ed., 405.

[41] *Id.*, citing *People v. Quijano, et al.*, 52 O.G. 6956.

[42] 22 Phil. 562, 564 [1912]; also cited in Francisco, *supra*.

[43] 229 SCRA 754, 763 [1994].

[44] *People v. Tang Wai Lan*, 276 SCRA 24, 33 [1997].

[45] *People v. De Vera*, 275 SCRA 87 [1997].

[46] *Id.*

[47] *People v. Castro*, 274 SCRA 115 [1997].

[48] 234 SCRA 555 [1994].

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