

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CARLOS BOCO Y ALEJO AND RONALDO INOCENTES Y CRUZ, ACCUSED-APPELLANTS.

G.R. No. 129676. June 23, 1999

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

The capital penalty is not automatically imposed upon illegal peddlers of dangerous drugs. The penalties under the latest amendments to the Dangerous Drugs Law, introduced by Republic Act 7659, range from prison correccional to death, depending on the quantity and the kind of the prohibited or regulated drug involved and on the attendant mitigating and aggravating circumstances. More specifically, the penalty is reclusion perpetua to death when the amount of shabu involved is 200 grams or more. Since the prosecution did not prove the presence of any aggravating circumstance in the present case, the trial court indubitably erred in sentencing the appellants to death.

The Case

Before the Regional Trial Court (RTC) of Pasig City, Branch 163,[1] accused-appellants Carlos Boco and Ronaldo Inocentes were charged with violation of Section 21, Article IV of Republic Act No. 6425 (RA 6425), as amended, otherwise known as the Dangerous Drugs Law. The accusatory portion of the Information[2] dated October 24, 1996, filed against them by 3rd Assistant Provincial Prosecutor Felicitas A. Asinas-Guevarra, reads as follows:

"That on or about [the] 22nd day of October, 1996 in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring[,] confederating together and mutually helping one another, without having been authorized by law, did then and there willfully, unlawfully and feloniously attempt to deliver, distri[b]ute, transport or sell to another, white crystalline substance weighing 234.84 grams all contained in various heat-sealed transparent plastic bag[s] found positive to the test for [m]ethamphetamine hydrochloride locally known as 'shabu', a regulated d[ru]g."

During their arraignment on November 12, 1996, the accused-appellants, duly assisted by counsel, pleaded not guilty to the charge.[3] After trial, the RTC promulgated its herein assailed Decision[4] dated June 5, 1997, the dispositive portion of which states:

"WHEREFORE, premises considered, this Court finds accused Carlos Boco y Alejo @ Caloy and Ronaldo Inocentes @ Boyet Paa guilty beyond reasonable doubt as principals for violation of Section 21, Art. IV, R.A. 6425, as amended, and imposes upon them the supreme penalty of death and xxx a fine in the sum of P5,000,000.00.

"The 234.84 grams of shabu subject of the information in this case is hereby ordered forfeited in favor of the government and ordered turned over to the Dangerous Dru[gs] Board c/o NBI Manila, for disposal as provided by law."

The Facts

Version of the Prosecution

Based on the evidence proffered by the prosecution, the trial court summarized the factual antecedents of the case as follows:[5]

"About 2:00 o'clock in the morning on 22 October 1996, a confidential informer arrived in the District Anti-Narcotic Unit, Eastern Police District (DANU-EPD), Camp Miguel Ver, Capitol Compound, Pasig City and talked with Capt. Rodrigo Bonifacio [who, in turn,] tol[d] SPO1 Emmanuel Magallanes that the informer [would] come back and if the suspect [was] available, he [would] act as poseur-buyer. When the confidential informer returned and informed Capt. Bonifacio that the suspect [was] available, Capt. Bonifacio formed a team to effect a buy-bust operation. The team left their headquarters about 3:15 a.m. on 22 October 1996 and arrived at the target area about 3:45 a.m. on the same date. Upon arrival in the place, SPO1 Magallanes with the confidential informer proceeded to the pre-arranged meeting place located at Martinez St., corner Gen. Kalentong St., Brgy. Vergara, Mandaluyong City. The rest of the team members placed themselves in strategic places in the area, while SPO1 Magallanes and the confidential informer stood-by in the designated meeting place. Soon thereafter, a Mitsubishi Lancer car arrived and stopped at where SPO1 Magallanes and the confidential informer were standing by. On board the car were two (2) men, the driver and a passenger. When the confidential informer recognized @ Caloy, the man seated in th[e] passenger seat [o]f t[h]e Mitsubishi Lancer, he introduced SPO1 Magallanes to him telling @ Caloy that he would be a potential regular customer. After a short conversation, SPO1 Magallanes asked @ Caloy if he ha[d] the shabu which was previously ordered. Alias Caloy told SPO1 Magallanes that he ha[d] the shabu and it [would] cost him P20,000.00. SPO1 Magallanes then showed @ Caloy his P20,000.00, but before giving it, he asked [if he could] examine first the shabu. Alias Caloy then asked his companion, @ Boyet Paa, to get the shabu. Boyet Paa then got one (1) piece of heat sealed plastic from the glove compartment of the car and handed it to @ Caloy who in turn handed it over to SPO1 Magallanes who examined it and found that it contained crystalline substance suspected to be shabu. SPO1 Magallanes then made the pre-arranged signal to his back-up who rushed to where he was and after introducing themselves as policemen, arrested the suspects. SPO1 Magallanes then frisked @ Caloy and found five (5) pcs. of heat sealed plastic bags neatly taped around his right leg weighing about 210 grams. SPO1 P[o]ngyan who frisked 'Boyet Paa found from his right front pocket one (1) piece of heat sealed plastic containing crystalline substance weighing about 5 grams. The suspects then were informed of the offense they ha[d] committed and their constitutional rights. They were also identified as Carlos Boco y Alejo @ Caloy and Ronaldo Inocentes y Cruz @ Boyet Paa. Thereafter, they were brought to the police headquarters together with the confiscated items. At the headquarters, the suspects were turned over to the police investigator and the suspected shabu forwarded to the PNP Crime Laboratory at Camp Crame for examination and P/Insp. Isidro Cariño to whom the required examination was assigned, found the same positive for Methamphetamine Hydrochloride (shabu), a regulated drug (Exhibit 'C')."

Version of the Defense

On the other hand, the defense presented the following version of the facts:[6]

"On 21 October 1996 before midnight, Carlos Boco, Jr. and Ronaldo Inocentes went to 246 La Torre St., Sta. Ana, Manila to pic[k]-up the former's live-in partner. They stayed in the place for about three (3) hours. When they boarded their car and [was] about to leave, men approached them with the[i]r guns drawn, ordered them [t]o alight from their car and to board a van to bring them to the Eastern Police District. Francis Labutap corroborated Boco on this point. Before proceeding to said Eastern Police District, they passed by the 7-11 Restaurant at New Panaderos, Mandaluyong City. They stopped there for about half an hour. While in the place, the driver of the van took from Boco his jewelries consisting of three (3) rings, one (1) necklace, one (1) bracelet and his wrist watch plus 10,000.00 Yen, \$100.00 and P18,500.00. Thereafter, Capt. Bonifacio arrived in the place [and] told them xxx '[Y]ari kayo', shabu was found on board your car. Boco told Capt. Bonifacio that they d[id] not have any drug. Thereafter, they were brought to the Eastern Police District and about 2:00

p.m. that day, they were required to fac[e] press people and there, they denied the charges agai[n]st them. About 7:00 p.m. that [s]ame day, they were transferred to the City Jail of Mandaluyong City."

Ruling of the Trial Court

In giving more credit to the prosecution evidence than the defense, the trial court reasoned:[7]

"As between a denial and an alibi [of the accused] and the positive testimonies of the prosecution witnesses, the latter has more weight than the former xxx. Moreover, police officers are entitled to the presumption that they have performed their official duties. Their testimony is entitled to great respect xxx.

In arriving at its conclusion that there was a consummated unauthorized sale of the regulated drug methamphetamine hydrochloride, the court a quo explained:[8]

"In buy-bust operations involving drugs, the delivery of the buy-bust money to the seller is not a prerequisite. The fact that the money was shown to the pusher and the poseur-buyer asked that he be shown the drug before he [would deliver] the money and said drug was handed to said poseur-buyer, that circumstance is enough for the police to apprehend the accused. Sale transaction of drugs under such circumstances is already perfected. After all, [a] contract of sale is perfected upon [the] meeting of the minds of the parties as to the object and the price thereof (Art. 1475, New Civil Code). Therefore, the arrest of the accused is legal, accused having been caught in flagrante delicto pushing prohibited drugs xxx. Hence, the search subsequent to accused's arrest is also legal (Sec. 12, Rule 126, Rules of Court; xxx).

The trial court also concluded from the acts of both accused-appellants that conspiracy existed between them. "Inocentes was the driver of the car they were using at the time. When asked by SPO1 Magallanes to allow him to examine the shabu before giving the money, Boco asked Inocentes to get the shabu and the latter got one heat[-]sealed plastic sachet from the glove compartment of the car and handed it to Boco who in turn handed it to SPO1 Magallanes. Such acts, "the court ruled, "clearly constitute conspiracy." [9]

Finally, addressing the variance between the offense (attempted sale or delivery) for which the accused were charged on the one hand and, on the other, the evidence (of consummated sale) presented by the prosecution during the trial, the lower court said:[10]

"The evidence shows that a perfected contract of sale [o]f shabu has been entered into between Carlos Boco @ Caloy and SPO1 Emmanuel Magallanes although SPO1 Magallanes did not deliver the money but instead confiscated the entire shabu in the possession of accused. Although the evidence shows a perfected buy-bust operation, the investigating prosecutor played safe. Instead of filing [for] violation of Section 15, Article IV of RA 6425, as amended, he chose to file the information under Section 21 of the same law. That, nevertheless, did not affect the liability of the accused because if the evidence is sufficient to support conviction of a consummated offense under Section 15, Article IV of RA 6425, as amended, there is no reason why the same evidence cannot support conviction for an attempted offense under Section 21 of the same law. Besides, violation of Section[s] 15 and 21 of the law provides the same penalty."

Issues

In his Appeal Brief[11] filed by his own counsel,[12] Carlos Boco assigns the following alleged errors in the RTC Decision:

"1. The lower court erred in holding that the prosecution has established the guilt of the accused beyond reasonable doubt.

a. The lower court erred in holding that what transpired in the arrest of the accused was a buy-bust operation and not a frame-up.

b. The lower court erred in not considering the buy-bust operation, assuming that it did occur[,] as a case of

instigation and not [of] a valid entrapment.

2. Assuming that the testimonies of the prosecution were true, the court erred in convicting the accused for conspiracy in committing illegal sale of seven (7) packs of shabu weighing 234.84 grams when only one pack containing about 20 grams appeared to be the object of the sale and the rest having been merely found in the possession of the accused when they were subjected to body search."

In his separate Brief[13] filed by his counsel de parte,[14] Ronaldo Inocentes makes the following assignment of errors:

"I.

"THAT THE TRIAL COURT ERRED IN xxx CONCLUDING [THE] EXISTENCE OF CONSPIRACY ON THE BASIS OF INCONCLUSIVE, UNCLEAR, UNSUBSTANTIATED AND UNCORROBORATED FACT AND EVIDENCE OF THE MERE PRESENCE OF ACCUSED-APPELLANT INOCENTES AT THE PLACE OF THE INCIDENT WHICH WAS EXPLAINED AND UNREBUTTED, WHERE THE SPECIFIC TARGET WAS BOCO WHERE [THE] ACTUAL FACT AND EVIDENCE SHOW NO CLEAR OR PARTICIPATORY ACT OF INOCENTES OF A CONSCIOUS DESIGN TO COMMIT AN OFFENSE SAVE THE LONE UNSUPPORTED TESTIMONY OF SPO1 MAGALLANES ABSOLVING INOCENTES TESTIFYING THAT INOCENTES WAS SIMPLY SEATED AT THE DRIVER'S SEAT AND THAT IT WAS BOCO WHO TOOK THE SHABU FROM THE COMPARTMENT OF THE CAR HIMSELF.

II.

"THAT THE TRIAL COURT ERRED GRIEVOUSLY IN RENDERING AND PROMULGATING A DECISION CONVICTING ACCUSED-APPELLANTS BOCO AND INOCENTES FOR THE ALLEGED SALE AND DELIVERY OF SHABU IN AN INFORMATION CHARGING AND DESCRIBING THE OFFENSE BEING PROSECUTED AS 'WILLFULLY, UNLAWFULLY, AND FELONIOUSLY [AN] ATTEMPT TO DELIVER, DISTRIBUTE TRANSPORT OR SELL TO ANOTHER, WHITE CRYSTALLINE SUBSTANCE' AND THEREFORE A VERY CLEAR VARIANCE EXISTED BETWEEN THE CRIME CHARGED AND THE EVIDENCE PRESENTED RESULTING IN THE PROMULGATION OF AN ERRONEOUS DECISION.

III.

"THAT THE TRIAL COURT ERRED IN HOLDING AND CONVICTING ACCUSED-APPELLANTS ON MERE INFERENCES AND ASSUMPTIONS OF COMPLETE SALE OR TRANSACTION WHERE EVEN THE EXISTENCE OF THE SHABU AND THE ALL IMPORTANT BUY-BUST MONEY IS DOUBTFUL CONSIDERING THAT IN OUR JURISDICTION, NOT ONLY EACH AND EVERY ASPECT AND FACT CLAIMED AS EVIDENCE OF THE COMMISSION OF A CRIME MUST BE PROVEN BY VERY CLEAR AND CONVINCING EVIDENCE, THE EVIDENCE OF GUILT MUST BE PROVEN BEYOND REASONABLE DOUBT WHICH SADLY IN THE CASE AT BAR, THE PROSECUTION FAILED MISERABLY TO PRODUCE.

IV.

"THAT THE TRIAL COURT ERRED GRIEVOUSLY IN NOT RESOLVING ALL DOUBTS, INCONSISTENCIES, HIGHLY IMPROBABLE AND UNCONVINCING EVIDENCE PRESENTED BY THE PROSECUTION IN FAVOR OF THE ACCUSED-APPELLANT INOCENTES, TOTALLY IGNORING AND FAILING TO GIVE WEIGHT AND RECOGNITION TO THE MOST SUPERIOR AND IMPORTANT PRESUMPTION IN LAW AND JURISPRUDENCE, THAT OF THE PRESUMPTION OF INNOCENCE WHICH OVERRIDES ALL OTHER PRESUMPTIONS, MOST ESPECIALLY IN THE CASE AT BAR WHERE THE PROSECUTION HAS FAILED MISERABLY IN ITS ASSIGNED TASK OF PRODUCING THAT QUANTUM OF EVIDENCE REQUIRED TO PROVE THE GUILT OF ACCUSED-APPELLANT RONALDO INOCENTES BEYOND THE SHADOW OF ANY DOUBT."

Furthermore, Aurora Salva Bautista, collaborating counsel who represented both appellants during some part of the trial, submits a Supplemental Brief[15] in which she makes the following assignment of errors:

"1.

THE TRIAL COURT ERRED IN NOT RULING THAT THE PROSECUTION FAILED TO IDENTIFY THE SHABU WHICH CONSTITUTES THE CORPUS DELICTI OF THE OFFENSE CHARGED;

2.

THE TRIAL COURT MISERABLY FAILED TO REFUTE THE IRRECONCILABLE TESTIMONIES OF THE PROSECUTION WITNESSES SPO1 EMMANUEL MAGALLANES AND SPO1 ROBERT S. PONGYAN IN RELATION TO THEIR JOINT AFFIDAVIT AS POINTED OUT BY THE ACCUSED-APPELLANTS IN THEIR MEMORANDUM SUBMITTED BEFORE SAID COURT[;]

3.

THE TRIAL COURT ERRED IN RELYING ON THE WEAKNESS OF THE DEFENSE RATHER THAN ON THE STRENGTH OF THE PROSECUTION EVIDENCE;

4.

THE TRIAL COURT ERRED IN RELYING MAINLY ON THE PRESUMPTION OF REGULARITY OF DUTY PERFORMED RATHER THAN ON THE CONSTITUTIONAL PRESUMPTION OF THE INNOCENCE OF THE ACCUSED; AND

5.

THE TRIAL COURT ERRED IN NOT RULING THAT THE BUY-BUST OPERATION AGAINST THE ACCUSED-APPELLANTS WAS A MERE FRAME-UP"

In sum, the issues raised by the accused-appellants involve (1) the sufficiency of the prosecution evidence to support their conviction, (2) the existence of conspiracy between them, (3) the validity of the entrapment ("buy-bust" operation or frame-up), and (4) the alleged variance between the offense charged and the evidence proffered.

The Court's Ruling

The appeal[16] has no merit. We find, however, that the trial court erred in imposing the proper penalty.

First Issue:

Sufficiency of Prosecution Evidence

The various briefs filed by the appellants similarly aver that the evidence adduced by the prosecution failed to establish their guilt beyond reasonable doubt. According to them, (1) the money allegedly used by the police to buy the shabu from the appellants was not presented or identified in court; (2) the shabu itself was not properly identified; and (3) there were material inconsistencies in the testimonies of the police officers, which could have been clarified by the informant who, however, was not presented as a witness. All these circumstances, appellants claim, are enough to create doubt as to the occurrence of the alleged crime.

To dispose of the appellants' first argument, we reiterate the rule that the non-presentation of the marked money does not create a hiatus in the evidence for the prosecution, so long as the sale of the dangerous drugs is adequately proven and the drug itself is presented before the court.[17] As to the appellants' second argument, we hold that the dangerous drugs confiscated from them during the buy-bust operation were sufficiently identified and offered as evidence. To refresh their memories, it should be recalled that their counsel[18] during the initial part of the trial agreed to dispense with the direct examination of P/Insp. Isidro Cariño regarding the test he had conducted on the substances confiscated from the appellants. Thus, the public prosecutor[19] proceeded to mark the pieces of evidence that were supposed to be presented by said witness: (1) the Request for Laboratory Examination dated October 22, 1996, submitted to the PNP Crime Laboratory, and the latter's receiving stamp thereon (as Exhibits B and B-1, respectively); (2) the Physical Sciences Report, stating that such examination yielded positive results for methamphetamine hydrochloride or shabu (as Exhibit C); and (3) a sealed blue plastic bag containing seven (7) plastic sachets, each with undetermined amounts of the methamphetamine hydrochloride (as Exhibit D).[20] During its formal offer of evidence, the prosecution submitted said Exhibit D, which was described as "the blue self-sealing envelope with markings of [']bianchi blue['] containing 232.84 grams of shabu," to "prove the existence of shabu which is the subject matter of the Information." [21]

We deem such offer a substantial compliance with the pertinent rules on evidence. The separate marking of each of the seven sachets, as insisted by the appellants, is not a must. At any rate, they do not deny that the marked plastic bag contained the packs of shabu that were confiscated from them.

Material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.[22] Corpus delicti has two elements: (1) proof of the occurrence of a certain event -- for example, that a man has died or a building has been burned; and (2) some person's criminal responsibility for the act.[23]

The principal witnesses to the commission of the offense for which the appellants are accused clearly established the above elements: an illegal sale of the regulated drug actually took place and both appellants were the authors thereof. The poseur-buyer, SPO1 Emmanuel C. Magallanes, categorically testified as follows:

"Q Now, could you recall xxx any unusual incident that transpired when you were at the office at about 1:00 o'clock in the morning?

A Capt. Bonifacio [was] talking to somebody and told me not to leave.

Q After Capt. Bonifacio talked to that person, what happened?

A He told that the person he [was] talking with will come back and I will be the one to accompany him to buy [from a certain] Caloy.

Q What else did Capt. Bonifacio [tell] you he talked [about] with that person?

A I [was] the one who talked to that person and Capt. Bonifacio introduced me.

Q So, you were introduced to that informant?

A Yes, ma['a]m.

Q And, were you able to talk to that informant?

A Yes, ma['a]m.

Q What did you talk about?

A The informant told me to wait and the person he [was] talking with [come back and I will return to the office when I finished talking to him. The person named Caloy.

Q And, after that, what happened?

A At about 2:10 o'clock, he c[a]me back and told me that [he] already talked to the person named Caloy.

Q Now, after relaying that information, what did your office do, if any?

A I was ordered to go with that person to meet Caloy.

Q Other than that, what else was the instruction of Capt. Bonifacio?

A Capt. Bonifacio told me to make sure that we will be able to buy shabu.

Q Then, after that, what happened?

A We proceeded [to] Martinez St. cor. Vergara, ma['a]m.

Q Were is that Martinez Street?

A Mandaluyong, ma['a]m.

Q You said that we proceeded to xxx Martinez St., at Mandaluyong[:] who are you referring to as we?

A

The informant, ma['a]m.

Q Who else [was] with you, if any?

A Our Team, ma['a]m.

Q Who [were] the members of that Team that you [are] talking about?

A I [was] with SPO4 Basco, SPO1 Pongyan, SPO4 Bernardo, SPO4 Velasco and the others I cannot remember.

Q

Were you able to reach the place, Mr. witness?

A Yes, ma['a]m.

Q Now, what happened when you reached that place?

A A car arrived with two (2) persons.

Q What kind of vehicle xxx arrived?

A It [was] like a Lancer.

Q When the motor vehicle arrived, where were you then positioned?

A We were just standing side by side with the informant because that [was] what we ha[d] agreed upon.

Q What [were] you wearing at that time, Mr. witness?

A Civilian clothes, ma['a]m.

Q What about the other members of the team, where were they then?

A They were a little bit farther but they saw me.

Q

Upon the arrival of the two (2), what happened?

A I was introduced to Caloy Boco.

Q And, how were you introduced by the informant of yours?

A The informant told [me] that 'okay ito[,] walang problema[,] gumagamit ito.'

Q And, then, what happened after that?

A

I asked him if I [could] buy and [he] told me[,] if you have P20,000.00 I will give you.

Q And, what was your response to that [remark of] this Boco?

A

I showed him the P20,000.00, ma['a]m.

Q After you showed the P20,000.00, what happened?

A I asked him if I could examine the shabu.

Q

Were you able to examine the shabu?

A He got a pack from the compartment and when I examined it I found it to be positive. I lighted a cigarette to signal to my companions.

Q What [was] the purpose of lighting a cigarette?

A That [would] be a signal that I [was] holding the evidence.

Q After the pre-arrange[d] signal, what happened?

A I introduced myself that I [was] a police [officer].

Q Then, after introducing yourself as a police officer, what happened?

A My companions approached us, then, pinaligid na po nila, pinaputok na po sila.

Q After ordered him to a shot, who searched?[sic]

A Carlos Boco, ma['a]m.

Q And, when you searched the question [sic] of Boco, [what] did you [find], if any?

A Yes, ma['a]m, on his right leg xxx shabu [was] taped.

Q What else did you find on his body, if any?

A Five (5) pcs. of shabu, ma['a]m.

Q What about the other person?

A Iyong isa po si Pongyan ang nanghuli."[24]

A member of the arresting team, SPO1 Robert Pongyan who personally searched the body of Appellant Inocentes

right after his arrest, testified on the incident as follows:

"Q At 1:00 o'clock in the morning of October 22, 1996 could you recall where were you then?

A We were at the headquarters of the District Anti-Narcotics Unit.

Q While you were in your office, could you recall of any unusual incident that transpired?

A Yes, ma['a]m.

Q What was that unusual incident?

A I noticed that our Chief, Sr. Insp. Rodrigo Bonifacio was having a conversation with an informant.

PROSEC. LEONARDO:

Q Did you happen to know what was the nature of the conversation of Bonifacio with that informant?

A It [was] regarding xxx narcotics or drug dealing.

Q And after that talk with Bonifacio, what happened?

A Sr. Insp. Bonifacio told us to stand by for possible dispatch.

Q Were you actually dispatch[ed] during that time?

A Yes, ma['a]m.

Q When you were dispatched, you said, 'we'. Wh[o] [were] you referring [to] as 'we'?

A My companions [we]re Sr. Insp. Bonifacio, SPO Bernardo[,] PO3 Enano, SPO Magallanes, Silva and Sgt. Basco.

Q What was your participation with respect to the team created by Bonifacio?

A I was tasked to be a back-up.

Q How about Magallanes?

A As I know, he was tasked to be the poseur buyer.

Q Now, after dispatching, where did you proceed?

A We proceeded to Mandaluyong City.

Q Where in Mandaluyong City?

A At Brgy. Vergara corner Kalentong.

COURT:

Q Is this Barangay Vergara corner Kalentong or Vergara Street?

A Street, Your Honor.

PROSEC. LEONARDO:

Q Were you able to reach that place of your target?

A Yes, ma['a]m.

Q What happened [when you] reach[ed] that place?

A Sr. Insp. Bonifacio told us to position our vehicle.

PROSEC. LEONARDO:

Q After positioning your vehicle, what happened?

A We waited.

Q For what?

A For our subject.

Q [Did] the subject of your operation [arrive] at the scene?

A Yes, ma['a]m.

Q When the subject person arrived, what happened?

A SPO Magallanes together with the informant talked to the subject.

Q You said that the subject arrived[;] did you happen to see how did they arrive in the place?

A They were on board a Mitsubishi car.

Q How many were inside that car that arrived?

A Two (2).

Q Two (2) persons?

A Two (2) persons.

Q What [were] their gender[s], male or female persons?

A Two (2) male persons.

Q

You said Magallanes and the informant talked to these two (2) male persons. How far were you when Magallanes and the informant were talking to these male persons[?] How far were you from them?

A We were about ten (10) to fifteen (15) meters [away].

Q When Magallanes and the informant were talking to the 2 male persons, what happened?

A The subject handed something to SPO Magallanes.

PROSEC. LEONARDO:

Q How did you know that the subject male person was handing something to Magallanes?

A From our position, we saw their action, their movement from our position.

Q So, it was visible from where you were standing what was transpiring [at] the place where Magallanes and the informant were?

A Yes, mam.

Q When you saw that, after that something was handed by the subject to Magallanes, what happened?

A After that, we saw Magallanes [accost] the subject.

Q After the subject was xxx accosted by Magallanes[,] what happened?

A Our team leader, Sr. Insp. Bonifacio, told us to immediately alight and proceed to where Magallanes [was].

Q

You alighted from the vehicle?

A Yes, ma['a]m.

Q After alighting from the vehicle, what happened?

A We rendered assistance to SPO1 Magallanes.

Q When you rendered assistance, what happened?

A I proceeded to the vehicle of the subject together with Enano.

Q Why did you proceed to the vehicle of the subject?

A Because Sr. Insp. Bonifacio told me to secure the car.

Q What did you do after proceeding to the car?

A We introduced ourselves as policemen and frisked the occupant of it.

PROSEC. LEONARDO:

Q You frisked the occupant of the car?

A Yes, ma['a]m.

Q You mean to tell the Court that you asked the occupant of the car to step out of the car?

A Yes, ma['a]m.

Q And you said you frisked the persons [--] there were two (2) [--] did you happen to know the identit[ies] of the persons inside the car?

A It [was] only a certain Boyet, Ma'am.

Q This Boyet, where was he seated while they were inside the car?

A At the driver's seat, Ma'am.

Q He was the one driving the car?

A Yes, Ma'am.

Q And this was the person whom you frisked?

A Yes, Ma'am.

Q When you frisked [him], what did you recover, if any?

A We recovered, [to] my personal knowledge xxx a shabu.

Q

How [much] shabu [did] you [recover] from this Boyet[?]

A One (1) pack of approximately five (5) grams.

Q From what part of this person of Boyet did you recover the shabu?

A Right front pocket of his shorts."[25]

Apparently, there are no material inconsistencies in the testimonies of the two principal prosecution witnesses. Rather, they complement each other to give a complete picture of how the accused-appellants' illegal sale of the regulated drug transpired, and how the sale led to their apprehension in flagrante delicto. At the very least, their testimonies establish beyond doubt that regulated drugs were in the possession of both appellants, who had no authority to possess or sell them.

Under the circumstances, we do not find any necessity for additional corroborating testimony, particularly that of the confidential informant. Intelligence agents, due to the nature of their work, are often not called to testify in court so as not to reveal their identities publicly. Once known, they could no longer be used again and, worse, may be the object of revenge by the criminals they implicate. The prevailing doctrine is that their testimonies are not essential for conviction, nor are they indispensable to a successful prosecution. With the testimonies of the arresting officers, they would be, after all, merely corroborative and cumulative.[26]

Time and again, this Court has ruled that the trial court's findings on the credibility of witnesses and their testimonies are accorded great weight and respect, in the absence of a clear showing that some facts or circumstances of weight or substance that could have affected the result of the case have been overlooked, misunderstood or misapplied. This is because the lower court had the opportunity to observe directly the demeanor of the witnesses as they testified.[27]

Second Issue:

Conspiracy

Appellant Inocentes asserts that he had no participation in the commission of the crime and that the prosecution

miserably failed to prove that conspiracy existed between him and his co-appellant. He claims that he merely drove for the latter and that the single pack of shabu allegedly found in his pocket was planted evidence.

It is settled in our jurisprudence that direct proof is not essential to establish conspiracy, as it may be inferred from the acts of the accused before, during and after the commission of the crime, all of which indubitably point to or indicate a joint purpose, a concert of action and a community of interest.[28]

In the case at bar, both appellants arrived at the crime scene on board the same vehicle. While only Appellant Boco talked to the informant and the police officer who posed as the buyer, it was Appellant Inocentes who took out the sample shabu from the glove compartment of the car and handed it over to Policeman Magallanes. When both were frisked right after their arrest, packs of the regulated substance were found in their respective bodies. Obviously, their behavior and demeanor were indicative of a joint purpose -- to sell the shabu.

One who joins a criminal conspiracy adopts in effect the criminal design of his co-conspirators, and he can no longer repudiate the conspiracy after it has materialized.[29] Conviction is proper upon proof that the accused-appellants acted in concert. The act of one then becomes the act of all, and each of the accused will thereby be deemed equally guilty as co-principals of the crime committed.[30]

Third Issue:

Buy-Bust Operation or Frame-Up?

A buy-bust operation is a form of entrapment, which in recent years has been accepted as a valid means of arresting violators of the Dangerous Drugs Law.[31] It is commonly employed by police officers as an effective way of apprehending law offenders in the act of committing a crime.[32] In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense.[33] Its opposite is instigation or inducement, wherein the police or its agent lures the accused into committing the offense in order to prosecute him.[34] Instigation is deemed contrary to public policy and considered an absolatory cause.[35]

An allegation of frame-up and extortion by police officers is a common and standard defense in most dangerous drug cases.[36] It is, however, viewed by this Court with disfavor, for it can be easily concocted.[37] To substantiate such defense, including instigation, the evidence must be clear and convincing.[38]

In the case at bar, the appellants merely claimed that they were victims of frame-up and extortion by the narcotics agents of the Eastern Police District. They, however, failed to present sufficient credible evidence to substantiate their claims. They submitted no plausible reason or ill motive on the part of the arresting officers that could have spurred the latter to collar them in particular. We have held in numerous cases that frame-up, often imputed to police officers, requires strong proof when offered as a defense, because of the presumption that public officers acted in the regular performance of their official duties.[39]

Moreover, the defense of instigation asserted by Appellant Boco is incompatible with frame-up. In the former, the crime is actually performed by the accused, except that the intent originates from the mind of the inducer. In frame-up, however, the offense is not committed by the accused. Precisely, the accused is only framed or set up in a situation leading to a false accusation against him. Instigation and frame-up, therefore, cannot be present concurrently.

In the absence of proof of any ill motive or intent on the part of the police authorities to falsely impute a serious crime to the appellants, what must prevail over the latter's self-serving and uncorroborated claim that they have been framed is the presumption of regularity in the performance of the former's official duties, as well as the doctrine that the findings of the trial court on the credibility of witnesses are entitled to great respect.[40]

Fourth Issue:

Variance Between Offense Charged
and Evidence Proffered

Finally, appellants argue that the Information charged them with violation of Section 21 of the Dangerous Drugs Law, or merely an attempt to sell the regulated drug without authority of law. Hence, they contend that they cannot be tried and convicted of consummated sale under Section 15 of the same law, which the prosecution evidence tried to establish.

Such argument is flawed. More particularly, the accused-appellants were charged with violation of Section 21, Article IV of RA 6425, as amended, committed by "conspiring[,] confederating together and mutually helping one another, without having been authorized by law, xxx [in] attempt[ing] to deliver, distri[b]ute, transport or sell to another, white crystalline substance xxx found positive xxx for [m]ethamphetamine hydrochloride xxx." Said Section 21 reads:

"SEC. 21. Attempt and Conspiracy. -- The same penalty prescribed by this Act for the commission of the offense shall be imposed in case of any attempt or conspiracy to commit the same in the following cases:

- (a) Importation of dangerous drugs;
- (b) Sale, administration, delivery, distribution and transportation of dangerous drugs;
- (c) Maintenance of a den, dive or resort for prohibited drug users;
- (d) Manufacture of dangerous drugs; and
- (e) Cultivation or culture of plants which are sources of prohibited drugs."

Clearly, the provision covers attempt and conspiracy, both of which were alleged in the Information. This negates any surprise that could have adversely affected the appellants in their defense. As said earlier, the prosecution evidence has convincingly established that both appellants conspired to sell the shabu, without authority of law.

Nevertheless, assuming *arguendo* that conspiracy was not proven, the appellants may still be convicted of the attempt to sell. A mere attempt to commit a felony is surely subsumed in the full execution thereof. To attempt is to commence the commission of a crime by overt acts.[41] If one has been proven to have completely carried out all the acts necessary to commit the crime, he has certainly been proven to have executed the initial act required in an attempt.

In any case, we quote with approval the trial court's comment that a "violation of Section[s] 15 and 21 of the [Dangerous Drugs] law provides the same penalty." Thus, the appellants could have suffered no prejudice, had they been tried under either one or the other section.

Proper Penalty

An automatic appeal of a death sentence such as the present case opens the entire record for review. Hence, though not raised as an issue by the parties, the propriety of the penalty imposed, among others, was looked into by this Court. We find and so hold that the trial court wrongly sentenced the appellants to death. The penalty prescribed for an attempt or a conspiracy to sell at least 200 grams of shabu without authority of law, as well as a consummated sale thereof, is reclusion perpetua to death and a fine ranging from P500,000 to P10 million.[42] In accordance with Article 63 (No. 2) of the Revised Penal Code, the lesser penalty is applied when there are neither mitigating nor aggravating circumstances in the commission of the offense.[43] In the case at bar, the prosecution did not allege or prove the attendance of any modifying, much less aggravating, circumstance to justify the imposition of the extreme penalty. Hence, the prison sentence imposable upon the appellants is only reclusion

perpetua.

WHEREFORE, the appealed Decision is hereby AFFIRMED with the MODIFICATION that both appellants shall each serve reclusion perpetua and pay a fine of one million pesos (P1,000,000).

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Romero, J., on official business.

[1] Presided by Judge Aurelio C. Trampe.

[2] Rollo, pp. 4-5.

[3] Records, p. 25.

[4] Ibid., pp. 14-28.

[5] Assailed Decision, pp. 2-3; Rollo, pp. 15-16.

[6] Assailed Decision, pp. 3-4; Ibid., pp. 16-17.

[7] Assailed Decision, p. 6; Rollo, p. 19.

[8] Ibid., p. 5; Rollo, p. 18.

[9] Ibid., p. 13; Rollo, p. 26.

[10] Ibid., p. 14; Rollo, p. 27.

[11] Rollo, pp. 52-91.

[12] Atty. Ambrosio B. De Luna.

[13] Rollo, pp. 131-151.

[14] Atty. Edilberto Barot Jr.

[15] Rollo, pp. 181-191.

[16] This case was deemed submitted for resolution upon receipt by the Court on May 18, 1999, of Appellant Boco's Reply Brief.

[17] *People v. Lacbanes*, 270 SCRA 190, March 20, 1997.

[18] Atty. Redji Boller.

[19] Pros. Yolanda Leonardo.

[20] TSN, December 12, 1996, p. 4.

[21] TSN, December 13, 1996, p. 5.

[22] *People v. Castro*, 274 SCRA 115, June 19, 1997; *People v. Salazar*, 266 SCRA 607, January 27, 1997.

[23] *People v. Cabodoc*, 263 SCRA 187, October 15, 1996.

- [24] TSN, December 2, 1996, pp. 5-9.
- [25] TSN, December 9, 1996, pp. 3-7.
- [26] *People v. Salazar*, supra; *People v. Lising*, 275 SCRA 804, July 21, 1997.
- [27] *People v. Ferrer*, 255 SCRA 19, March 14, 1996; *People v. Lua*, 256 SCRA 539, April 26, 1996.
- [28] *People v. Magallano*, 266 SCRA 305, January 16, 1997; *People v. Gayon*, 269 SCRA 587, March 13, 1997; *People v. Hayahay*, 279 SCRA 567, September 26, 1997; *People v. Obzunar*, 265 SCRA 547, December 16, 1996; *People v. Sotes*, 260 SCRA 353, August 7, 1996.
- [29] *People v. Datun*, 272 SCRA 380, May 7, 1997.
- [30] *People v. Mahusay*, 282 SCRA 80, November 18, 1997; *People v. Mercado*, 275 SCRA 581, July 17, 1997; *People v. Torrefiel*, 256 SCRA 369, April 18, 1996.
- [31] *People v. Juatan*, 260 SCRA 532, August 26, 1996; *People v. Macasa*, 229 SCRA 422, January 29, 1994.
- [32] *People v. Doria*, GR No. 125299, January 22, 1999; *People v. Basilgo*, 235 SCRA 191, August 5, 1994.
- [33] *People v. Yumang*, 222 SCRA 119, 123, May 17, 1993; citing *People v. Ramos Jr.*, 203 SCRA 237 (1991).
- [34] *People v. Manalo*, 230 SCRA 309, 317, February 23, 1994; quoting from *People v. Ramos Jr.*, Ibid; *People v. Basilgo*, supra; quoting from *People v. Juma*, 220 SCRA 432 (1993).
- [35] *People v. Doria*, supra.
- [36] *People v. Enriquez*, supra; *People v. Lacbanes*, supra.
- [37] *People v. Alegro*, 275 SCRA 216, July 8, 1997; *People v. Velasco*, 252 SCRA 135, January 23, 1996.
- [38] *People v. Lua*, supra; *People v. Tranca*, 235 SCRA 455, August 17, 1994.
- [39] *People v. Clapano*, 227 SCRA 598, 604, November 8, 1993.
- [40] *People v. Lacbanes*, supra; *People v. Ponsica*, 230 SCRA 87, February 14, 1994.
- [41] Art. 6, RPC.
- [42] §§ 15, 20 (3) & 21, RA 6425, as amended by RA 7659.
- [43] *People v. Atop*, 286 SCRA 157, 175, February 10, 1998.

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