

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JOHN ISNANI Y ILINGAN AND SPO1 FREDINEL YAMUTA Y REMOTO, ACCUSED,

G.R. No. 133006. June 09, 2004

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Sad as it may seem, the realities of contemporary times reveal that transactions involving drugs have transcended even the ranks of our law enforcers. There is no question that the illicit distribution of drugs is one of the most serious problems pervading our society. Drug pushers have become increasingly daring, dangerous and, worse, openly defiant of the law, that drugs are being sold even by law enforcers.

This is an appeal from the Decision[1] dated December 1, 1997 of the Regional Trial Court, Branch 13, Zamboanga City, in Criminal Case No. 3163 (13277), declaring SPO1 Fredinel Yamuta y Remoto, appellant, guilty beyond reasonable doubt of selling “shabu,” in violation of Republic Act No. 6425, as amended, otherwise known as the Dangerous Drugs Act of 1972, and sentencing him to suffer the penalty of reclusion perpetua. He was also adjudged to pay P500,000.00 as fine.

The Amended Information[2] dated July 5, 1995 charges John Isnani y Ilingan and SPO1 Fredinel Yamuta y Remoto as follows:

“That on or about June 30, 1995, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, mutually aiding and assisting one another, not being authorized by law to sell, deliver, give away to another, transport or distribute any regulated drug, did then and there, willfully, unlawfully and feloniously, sell to one PO3 Nur A. Saradi, a NARCOM poseur-buyer, a small plastic sachet containing methamphetamine hydrochloride (shabu) weighing 0.060 grams, knowing the same to be a regulated drug.

CONTRARY TO LAW.”

Upon arraignment on July 28, 1995, appellant, assisted by counsel, pleaded not guilty to the crime charged in the Amended Information.

However, the other accused, John Isnani y Ilingan pleaded guilty and was imposed the penalty of six (6) months of arresto mayor, as minimum, to two (2) years, four (4) months and one (1) day of prision correccional, as maximum.

Trial ensued thereafter. The prosecution presented the following witnesses: PO3 Bonifacio C. Morados, PO3 Nur Saradi and PNP Forensic Chemist Mercedes D. Diestro. Their testimonies, woven together, established the following facts:

On June 29, 1995 at around 8:30 o’clock in the morning, the 9th Narcotics Regional Field Unit of the Philippine National Police (PNP), in Zamboanga City, was notified by a civilian informant about the drug trafficking activities of John Isnani at Ambassador Drive, Baliwasan Chico, Zamboanga City. Immediately, the PNP

organized an 8-man buy-bust team composed of PO3 Nur Saradi, as the poseur-buyer, PO3 Bonifacio C. Morados, PO3 Louie Erica, PO3 Jesus Formento, SPO2 Abdul Mutalib, SPO2 Jovito Cabuglay, SPO2 Undangan, and SPO2 Edgar Fernandez, as the team leader, to conduct surveillance and buy-bust operation. Thereafter, they marked the P500.00 bill bearing serial number G947506. On the same day, PO3 Saradi and the informant proceeded to Isnani's house at Baliwasan Chico. There, the informant introduced PO3 Saradi to Isnani as a prospective buyer of shabu. Since he already ran out of stock, Isnani told them to come back the following day as his supplier, a certain Butch, will bring the "stuff". PO3 Saradi reported this to his team leader.

The next day, or on June 30, 1995, at around 10:45 o'clock in the morning, the team, without the informant, went to Baliwasan Chico. Upon reaching Isnani's house, PO3 Saradi, talking in Taosug dialect, told Isnani again that he want to buy shabu. Then, Isnani went upstairs and talked to another man, herein appellant. Through an open door and at a distance of five to six meters away, PO3 Saradi saw appellant handing over to Isnani a small plastic sachet containing white crystalline substance. Afterwards, Isnani, holding the same plastic sachet, went downstairs and delivered it PO3 Saradi. Thereupon, PO3 Saradi paid Isnani the marked P500.00 bill. PO3 Saradi then made the pre-arranged signal by scratching his head with his right hand. Immediately, the back-up team headed by SPO2 Fernandez and PO3 Morados rushed in and arrested Isnani and confiscated the plastic sachet containing the white crystalline substance and the marked bill. PO3 Morados then proceeded upstairs to arrest appellant. At that instance, PO3 Morados saw appellant throwing a small plastic sachet outside the window. Subsequently, the team recovered the sachet outside the house on top of waterlily leaves. Also confiscated from appellant were the paraphernalia used for sniffing shabu and six (6) aluminum foils.

The arresting police officers brought appellant and Isnani to their station for investigation.

The substance contained in two plastic sachets, with a total weight of 0.10 grams, was submitted to the PNP Crime Laboratory for examination. It was positive for methamphetamine hydrochloride or shabu. While on the witness stand, Mercedes D. Diestro, PNP Forensic Chemist, confirmed her Physical Science Reports,[3] hereunder reproduced as follows:

"x x x

"SPECIMEN SUBMITTED:

Exh "A" – One (1) evidence transparent plastic bag containing the following:

- One (1) small heat-sealed transparent plastic bag with white crystalline substance weighing 0.060 grams marked as Exh "A-1";
- One (1) improvised water pipe marked as Exh "A-2";
- Six (6) aluminum foils marked as Exh "A-3" through "A-8," respectively.

x x x

"FINDINGS:

Qualitative examination conducted on the above-stated specimens gave the following results:

- Exh "A-1" – POSITIVE to the test for Methamphetamine hydrochloride (shabu), a regulated drug;
- Exh "A-2" through "A-8" – NEGATIVE to the test for Methamphetamine hydrochloride (shabu), a regulated drug.

"CONCLUSION:

Exh “A-1” contains Methamphetamine hydrochloride (shabu), a regulated drug.

Exh “A-2” through “A-8” do not contain Methamphetamine hydrochloride (shabu), a regulated drug.

x x x.”[4]

“x x x

“SPECIMEN SUBMITTED:

Exh “A” – One (1) small heat-sealed transparent plastic bag with white crystalline substance weighing 0.040 grams (Recovered)

x x x

“FINDINGS:

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the test for Methamphetamine hydrochloride (shabu), a regulated drug.

“CONCLUSION:

Exh “A” contains Methamphetamine hydrochloride (shabu), a regulated drug.

x x x.”[5]

Appellant merely denied the charge. He testified that he is a member of the PNP assigned to the Regional Intelligence Group at Cawa-Cawa Boulevard, Zamboanga City. On that particular date at around 9:20 o’clock in the morning, he was in Baliwasan Chico to commission Isnani, his “asset” or informant, to conduct surveillance on the Abu Sayaf Group (ASG). But Isnani was not home. So he decided to wait for Isnani at his living room. He was however surprised when, upon Isnani’s arrival, the NARCOM agents immediately handcuffed and arrested him.

He also testified that he made frequent visits to Baliwasan Chico because he was courting Isnani’s neighbor, Vanessa Libertad; and that PO3 Saradi harbored ill-feelings against him suspecting that he killed “Saradi’s NARCOM Asset” named “Waray”.

On December 1, 1997, the trial court rendered its Decision, the dispositive portion of which reads:

“WHEREFORE, in view of all the foregoing, this Court finds the accused SPO1 FREDINEL YAMUTA y REMOTO guilty beyond reasonable doubt of the offense of Violation of Section 15, Article III in relation to Section 21, Article IV of R.A. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended, and hereby sentences him to suffer the penalty of RECLUSION PERPETUA and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos.

The bailbond in the form of cash money, posted for the provisional liberty of the said accused is cancelled and he is hereby ordered committed to prison immediately. Upon the commitment of the accused Yamuta to prison, the bondsman, PO3 Ronaldo L. Remoto may withdraw the official receipt evidencing the deposit of the amount of the bond, upon signing a proper receipt for the same.

The two (2) heat-sealed plastic sachets containing the regulated drug known as Methamphetamine Hydrochloride (shabu) and introduced in evidence in this case, are hereby ordered confiscated and upon the finality of this decision, the Officer-in-Charge of this Court is directed to turn over the same to the proper authorities for disposition. Further, the Five Hundred Peso Bill used by the NARCOM agents in the buy-best operation which to the filing of this case is ordered return to the NARCOM agents upon the signing of a proper receipt for it by either Bonifacio Morados or Nur Saradi or by any other duly authorized NARCOM agent of

the same unit.

SO ORDERED.”

In convicting appellant of the crime of illegal sale of “shabu,” in violation of Republic Act No. 6425, as amended, the trial court held:

“x x x. Going over the evidence of the prosecution, it appears that it was the accused John Isnani who was the object of the buy-bust operation by the NARCOM agents. There were two attempts by the NARCOM agents to entrap John Isnani. The first attempt was made in the morning of June 29, 1995. However, this was not successful because John Isnani told poseur-buyer Nur Saradi that he had no stock to sell on that day and even told Saradi to return the following morning. The next morning, the NARCOM agents returned to the house of Isnani and it was then that the NARCOM poseur-buyer was able to buy the shabu which was placed in a small plastic sachet. This small plastic sachet which was sold to the NARCOM poseur-buyer was not originally in the possession of the accused Isnani, because the latter had to talk to a man who was in his house, and it was this man who turned out to be the accused Yamuta who handed the plastic sachet containing shabu to the accused Isnani who turned sold it to poseur-buyer Saradi.

After the sale of the shabu was completed and the accused Isnani arrested, the other NARCOM agents rushed up to the house and NARCOM agent Morados saw through the open door the man who was in the house throw an object through a window, which object landed on the leaf of a water lily containing a substance which was found positive for the presence of shabu upon examination at the PNP Crime Laboratory.

From these series of events, there is a very strong indication that the accused Yamuta is the source of the shabu which his co-accused Isnani sells to his customers. This is so, because the day before, or on June 29, 1995, Isnani had no shabu to sell to the NARCOM poseur-buyer and even suggested to the latter to return the next day. And it was only on that next day, June 30, 1995, that Isnani had the stock of shabu to sell, but which was handed to him by the accused Yamuta.

The accused Yamuta attributes ill-motive to the NARCOM agents for implicating him in this crime, saying that NARCOM agent Nur Saradi has a grudge against him as Saradi suspects that he killed Saradi’s NARCOM asset by the name of Waray. Scrutinizing closely, the testimonies of both NARCOM agent Nur Saradi and NARCOM agent Bonifacio Morados, there is no showing that they knew before hand the accused Yamuta. They only found out about his identity after they brought both Isnani and Yamuta to their office. Aside from his bare statement that the NARCOM agents were actuated by ill-motive, no other proof of such ill-motive, if any there was, was presented by the accused Yamuta. x x x.

When NARCOM agents Saradi and Morados testified, the Court has closely observed their demeanor and manner of answering the questions that were propounded and found that they both testified in frank and straightforward manner. And though they were subjected to an intense cross-examination by the defense counsel, they have remained steadfast in their accounts of what transpired during the buy-bust operation which resulted in the filing of this case. On the other hand, the same could not be said of the accused Yamuta whose demeanor and testimony cannot inspire faith and confidence in its veracity. In view of this, Yamuta’s denial cannot prevail over the detailed and unshaken testimonies of the apprehending officers (*People vs. Cerachon*, 238 SCRA 540).

The court has noted that the accused Yamuta in his testimony has emphasized the fact that he is himself a policeman, assigned with the Regional Intelligence Group and to justify his presence in the house of a confessed drug pusher, he claims that this confessed drug pusher in the person of his co-accused Isnani is his asset whom he has tasked to monitor the activities of a Muslim extremist group known as the Abu Sayyaf Group. And that aside from this, he further claims that he is courting a woman by the name of Vanessa Libertad who resides in the area.

To the mind of the court, these are all fabricated excuses which cannot prevail over the positive statements of the apprehending officers. If it were true that he had two purposes in going to the area where John Isnani resides, why did he just stay in John Isnani's house from 9:20 in the morning of June 30, 1995 up to quarter to 11:00 when Isnani was not in his house when he arrived thereat? He could have used the almost two hours he spent in Isnani's house by visiting the house of the girl he was courting and who he claims resides in the same area. This actuation would strongly suggest that the only purpose of his presence in the house of John Isnani was to conduct his illegal business of selling shabu together with John Isnani.

For reasons already stated, the court has no other alternative but to find the accused SPO1 Fredinel Yamuta y Remota guilty beyond reasonable doubt of the charges contained in the Information."

Appellant, in his brief, ascribes to the trial court the following errors:

"A.

IN FINDING THE ACCUSED GUILTY OF VIOLATING SECTION 15, ARTICLE III IN RELATION TO SECTION 21, ARTICLE IV OF R.A. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED;

"B.

IN WRONGLY APPRECIATING SOME FACTS AND CIRCUMSTANCES OF THE INCIDENT, AND IN RESOLVING DOUBTS AGAINST THE ACCUSED-APPELLANT WHEN SAID DOUBTS SHOULD HAVE BEEN RESOLVED IN FAVOR OF THE ACCUSED-APPELLANT; and

"C.

IN IMPOSING THE PENALTY OF RECLUSION PERPETUA AND A FINE OF P500,000.00 AND CONSEQUENTLY IN ORDERING THE CANCELLATION OF THE CASH BAILBOND OF THE ACCUSED POSTED FOR HIS PROVISIONAL LIBERTY AND COMMITTING THE ACCUSED TO PRISON IMMEDIATELY."

Section 15 of Article III in relation to the second paragraph of Sections 20 and 21 of Article IV of Republic Act No. 6425, as amended by Section 17 of R.A. No. 7659, provide:

"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.

x x x

SEC. 20. Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime. – The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved as in any of the following quantities:

x x x

- 200 grams or more of shabu or methamphetamine hydrochloride:

x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prison correccional to reclusion perpetua[6] depending upon the quantity.

x x x

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:

x x x

b) Sale, administration, delivery, distribution and transportation of dangerous drugs;

x x x.”

Under the above provisions, the elements necessary in every prosecution for the illegal sale of “shabu” are: (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.[7]

Appellant, in assailing the evidence for the prosecution, contends that: (1) the prosecution failed to establish his guilt beyond reasonable doubt considering that it was accused Isnani who sold and delivered the shabu to the poseur-buyer, and that the buy-bust operation was intended to entrap only accused Isnani; (2) the testimonies of PO3 Morados and PO3 Saradi that while in a public place, he handed and/or delivered to accused Isnani the small plastic sachet of shabu, is improbable; and (3) the inconsistency in the testimonies of the prosecution witnesses impairs their credibility.

We sustain the trial court’s finding that the prosecution proved by evidence beyond reasonable doubt all the elements of illegal sale of shabu and that appellant and accused Isnani conspired to commit the crime. PO3 Saradi, the poseur-buyer gave a detailed and unequivocal account of how the sale took place, from the initial negotiation that transpired on June 29, 1995, to the eventual delivery and sale of the shabu on June 30, 1995. His direct and straightforward account of appellant’s participation in the transaction could not be any clearer, thus:

“Q

And after a plan was formulated to conduct a buy-bust operation against the said accused John, and after you were furnished that buy-bust money, what did you do next being designated to pose as poseur-buyer in the operation?

A He requested me to go with the civilian informant.

Q At what place?

A At Baliwasan Chico, Zamboanga City.

Q And what is your purpose in going to that place?

A To confirm and to conduct a buy-bust.

Q

And what time was that when you left the office in order to comply with the instruction of SPO2 Fernandez?

A Around 10:30 of the same day.

Q Do you have any companion when you went to that place at that time?

A Yes, as a back-up.

Q So, when for the first time did you go to that place, Baliwasan Chico?

A Around 10:30.

Q What was the date?

A 29 June.

Q

Now, when you arrived in the vicinity of that place and with the information related to you by the civilian informant, what did you do?

A The civilian informant introduced me to a certain John.

Q Where was this John when he was introduced to you by the civilian informant?

A At his house.

Q How did this civilian informant introduce you to John?

A We were introduced to each other and the civilian informant informed John that I am going to buy shabu.

Q And what was the answer of John after you were introduced and also informed that you want to buy shabu?

A

He answered me that as of now, he has no stock. He told me to come back in the morning of the following day.

Q Why did he request you to come back the following morning?

A Because a certain Butch will bring the stuff.

Q

In accordance with the request or instruction of John for you to come back the following morning, what did you do the following morning?

A I informed my Team Leader that the suspect instructed me to come back the following morning.

x x x

Q

And the following morning you went back there together with the other three members. What time was that when you went back to that place the following morning.

A Around 10:45 o'clock, sir.

Q How about the civilian informant?

A We did not anymore let him come with us.

Q And when you arrived at the same place, where you were on June 29, 1995, what did you do there?

A I immediately proceeded to the house of the suspect.

Q And when you were already in the house of the suspect, what transpired there?

A I talked with John in Taosug dialect.

x x x

Q And what were you talking about?

A I want to buy shabu now. Can I buy from you?

Q What was the answer of John?

A Yes.

Q And after he answered you that you can buy shabu at that time, what did you do next?

A He said, just wait for a while and he went upstairs of the house.

Q While John went upstairs, where were you?

A I was in the stairs, in the 'batalan.'

Q While you were there, what happened next or what did you observe?

A I saw another man converse with John.

Q

When you say another man conversed with John, how far were you from them? Will you please make a reference point to where you are seated x x x?

A More or less from that wall.

ACP BELDUA

Five to six meters, your Honor.

Q And you said you saw a man talking with John. Why were you able to see him?

A Because the house is open.

x x x

ACP BELDUA

Q Aside from seeing them talking, what else did you observe?

A After a minute of talking or after a minute of their conversation, he handed something to John.

Q And then, after that?

A

And he went downstairs and handed it to me that something which was handed to him by the other man.

Q What was handed to you by John?

x x x

A A small sachet-plastic containing shabu.

x x x

Q And after John handed to you something in plastic, what did you do next?

A He asked me for the payment and I gave it to John.

Q What did you give to John?

A The payment in the amount of P500.00, as buy-bust money.

Q And after you gave to John the buy-bust money, what did you do next?

A I gave the pre-arranged signal.

x x x

Q x x x, what happened next after you gave the pre-arranged signal?

A SPO2 Fernandez and the others rushed to the scene.

x x x

Q What happened next when the other members of your team were already in the scene?

A

I held the right hand of John and I said that I am a Narcom and you are under arrest.”[8]

PO3 Morados corroborated PO3 Saradi’s above testimony. He also narrated the incidents surrounding the recovery of another small plastic sachet (with 0.040 grams of shabu) thrown by appellant outside the window, thus:

“x x x

Q And, after you saw that signal given by Saradi, what did you do next?

A

We rushed to the scene and we were able to arrest alias John. I went upstairs to look for this other person and I was able to reach him in the room and saw him throwing a small plastic out of the window.

Q Because of that action of the person whom you saw inside that room, what did you do next?

A

We placed him under arrest and we identified ourselves as NARCOM agents. After that, SPO2 Fernandez recovered a paraphernalia in using this shabu, while I went to where that small plastic was thrown.

Q Where did you find this small plastic?

A I was able to locate it on top of the water lily leaves.

Q

What is the connection of the plastic bag that you have recovered on top of the water lily leaves with the one that you saw being thrown by the person inside the room?

A This is the very same item that I saw this other person inside the room throwing out of the window.”

Certainly, credence should be given to the testimonies of the prosecution witnesses as they are police officers who are presumed to have performed their duties in a regular manner.[9]

However, appellant contends that the buy-bust operation was intended to entrap only accused Isnani. He further insists that he should not be convicted because he was not the one who actually sold and delivered the shabu to PO3 Saradi. Neither was he in possession of the seized shabu.

Appellant’s contention contravenes the basic rule on collective responsibility of malefactors in a conspiracy.

In *People vs. Medina*,[10] we held:

“It is elementary that when there is a conspiracy, the act of one is the act of all the conspirators, and a conspirator may be held as a principal even if he did not participate in the actual commission of every act constituting the offense. In conspiracy, all those who in one way or another helped and cooperated in the consummation of the crime are considered co-principals since the degree or character of the individual

participation of each conspirator in the commission of the crime becomes immaterial.”

Clearly, it is of no moment that appellant did not possess the seized shabu, or that he did not personally deliver it to PO3 Saradi and receive the monetary consideration therefor. It bears stressing that liability exists notwithstanding appellant’s non-participation in every detail in the execution of the crime.[11]

The evidence for the prosecution clearly shows that appellant and accused Isnani were of one mind, not only in selling the regulated drug, but more so in the manner they committed the crime. In fact, appellant’s conduct confirms that he consciously concurred with accused Isnani in committing the crime. Conspiracy having been adequately shown, appellant is thus liable for the illegal sale of shabu.

To further strengthen the prosecution’s evidence, the two sachets of shabu were presented before the trial court as Exhibits “B” to “B-3” and “I” to “I-1”. The first sachet was positively identified by PO3 Saradi as the very same sachet with shabu sold and delivered to him by accused Isnani who obtained the same from appellant. The other sachet containing shabu was also positively identified by PO3 Morados as the one he recovered above the waterlily leaves after appellant threw it outside the window.

That the white crystalline substances inside the two sachets are indeed shabu is shown by the Physical Science Reports Nos. D-071-95 and D-072-95 prepared by PNP Forensic Chemist Mercedes D. Diestro which both yield “POSITIVE to the test for methamphetamine hydrochloride (shabu), a regulated drug.”

We find appellant’s defenses of denial and alibi unavailing. It bears emphasis that appellant was caught in flagrante delicto in a legitimate entrapment operation conducted by the police. Hence, his identity as the person who delivered the regulated drug to accused Isnani for sale and distribution, cannot be doubted anymore. Such positive identification prevails over his weak defenses of denial and alibi.[12]

In *People vs. Eleonor Julian-Fernandez*,[13] we held:

“The defenses of denial and alibi have been invariably viewed by us with disfavor for it can easily be concocted but difficult to prove, and they are common and standard defense ploys in most prosecutions arising from violations of the Dangerous Drugs Act.”

In his brief, appellant desperately attempts to discredit the prosecution witnesses’ credibility by pointing inconsistency and flaw in their testimony. According to him, PO3 Morados and PO3 Saradi could not categorically say whether the “batalan” where accused Isnani delivered and handed the shabu is enclosed or not.

However, inconsistencies and discrepancies which refer to minor matters are irrelevant to the elements of the crime and cannot be considered as grounds for acquittal.[14]

A close scrutiny of the transcripts of the proceedings shows that the supposed flaw or inconsistency bears on relatively minor points and, even if taken as a whole, would still fail to debunk the gravamen of the accusation that appellant and accused Isnani conspired to commit the crime.

We are also not persuaded by appellant’s claim that it is contrary to human experience for drug pushers to sell shabu “in a place visible to the entire neighborhood.”

Indeed, drug pushing when done on a small-scale belongs to those types of crimes that may be committed any time and at any place.[15]

In *People vs. Paco*,[16] we sustained the conviction of a drug pusher caught selling illegal drugs at a billiard hall. There, we held:

“The fact that the parties are in a public place and in the presence of other people may not always discourage

them from pursuing their illegal trade as these factors may even serve to camouflage the same.”

Neither are we convinced that prosecution witnesses were impelled by an improper motive. It bears emphasis that credence shall be given to the narration of the commission of the crime by the police officers who are presumed to have performed their duties in a regular manner, unless there be evidence to the contrary, which is not present here. 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 defenses.[17]

In fine, the trial court correctly held that appellant is guilty of the crime of illegal sale of “shabu”. The only remaining question is the imposable penalty.

Section 24, Article IV of the law provides that the prescribed penalty is imposed in its maximum “if those found guilty of any of the said offenses are x x x members of police agencies and the armed forces.”

Here, it is undisputed that appellant is a member of the PNP assigned at the Regional Intelligence Group of Cawa-Cawa Boulevard, Zamboanga City. However, the prosecution failed to specifically allege this circumstance in the Information. Thus, the trial court erroneously appreciated the same and appellant cannot be sentenced to suffer the penalty of reclusion perpetua.

In *People vs. Amadeo Tira*,[18] we held:

“Under Section 15, Article III in relation to the second paragraph of Sections 20 and 21 of Article IV of Republic Act No. 6425, as amended by Section 17 of R.A. No. 7659, the imposable penalty of illegal sale of a regulated drug (shabu), less than 200 grams, as in this case, is prision correccional to reclusion perpetua. Based on the quantity of the regulated drug subject of the offense, the imposable penalty shall be as follows:

QUANTITY

IMPOSABLE PENALTY

Less than one (1) gram to 49.25 grams prision correccional

49.26 grams to 98.50 grams prision mayor

98.51 grams to 147.75 grams reclusion temporal

147.76 grams to 199 grams reclusion perpetua”

The quantity of the shabu involved herein is 0.060 grams. Pursuant to the second paragraph of Sections 20 and 21 of Article IV of R.A. No. 6425, as amended by Section 17 of R.A. No. 7659 (for unauthorized sale of less than 200 grams of shabu) and considering our ruling[19] in the above case, the imposable penalty is prision correccional.

Applying the Indeterminate Sentence Law, and there being no aggravating or mitigating circumstance that attended the commission of the crime, the maximum period is prision correccional in its medium period which has a duration of 2 years, 4 months and 1 day to 4 years and 2 months. The minimum period is within the range of the penalty next lower in degree which is arresto mayor, the duration of which is 1 month and 1 day to 6 months. Hence, appellant should be sentenced to 6 months of arresto mayor, as minimum, to 2 years, 4 months and 1 day of prision correccional in its medium period, as maximum.

As regards the fine imposed by the trial court, in view of the quantity of shabu confiscated in this case, we delete the penalty of fine imposed on appellant as the second paragraph of Section 20 of R.A. 6425, as amended by Section 17 of R.A. 7659, provides only for the penalty of imprisonment.[20]

WHEREFORE, the assailed Decision dated December 1, 1997 of the Regional Trial Court, Branch 13, Zamboanga City, in Criminal Case No. 3163 (13277) is hereby AFFIRMED with MODIFICATION in the sense that appellant FREDINEL YAMUTA is sentenced to suffer the indeterminate penalty of 6 months of arresto mayor, as minimum, to 2 years, 4 months and 1 day of prision correccional in its medium period, as maximum.

It appearing that appellant FREDINEL YAMUTA has been detained since December 1, 1997, already beyond the period of his maximum sentence of 2 years, 4 months and 1 day, his immediate release from confinement is ordered, unless he is lawfully held for some other charge or charges.

No pronouncement as to costs.

SO ORDERED.

Vitug, (Chairman), Corona, and Carpio-Morales, JJ., concur.

[1] Penned by Judge Carlito A. Eisma, Rollo at 13-23.

[2] Records at 12.

[3] Exhibits “D” and “H”, Folder of Exhibits.

[4] Exhibit “D”, Folder of Exhibits.

[5] Exhibit “H”, Folder of Exhibits.

[6] In *People vs. Simon* (G.R. No. 93028, July 29, 1994, 243 SCRA 555), we held: “where the quantity of the dangerous drug involved is less than the quantities stated in the first paragraph of Section 20 of R.A. No. 6425, the penalty to be imposed shall range from prision correccional to reclusion temporal, and not reclusion perpetua.

[7] *People vs. Tan*, G.R. No. 129376, May 29, 2002, 382 SCRA 419, 432, citing *People vs. Zheng Bai Hui*, 338 SCRA 420 (2000).

[8] Transcript of Stenographic Notes (TSN) dated September 14, 1995 at 2-10.

[9] *People vs. Julian-Fernandez*, G.R. Nos. 143850-53, December 18, 2001, 372 SCRA 608, 624, citing *People vs. Betty Cuba*, 336 SCRA 389 (2000).

[10] G.R. No. 127157, July 10, 1998, 292 SCRA 436, 448, citing *People vs. Paredes*, 24 SCRA 635 (1968); *Valdez vs. People*, 173 SCRA 163 (1986); *People vs. Dela Cruz*, 183 SCRA 763 (1990); and *People vs. Camaddo*, 217 SCRA 162 (1993).

[11] *People vs. Medina*, supra., citing *People vs. Cabiling*, 74 SCRA 285 (1976).

[12] *People vs. Evangeline Ganenas*, G.R. No. 141400, September 6, 2001, 364 SCRA 582.

[13] See Supra.

[14] *People vs. Ayuda*, G.R. No. 128882, October 2, 2003 at 11, citing *People vs. Artemio Invencion*, G.R. No. 131636, March 5, 2003.

[15] *People vs. Angelito Tan*, supra.

[16] G.R. No. 76893, February 27, 1989, 170 SCRA 681, 689, cited in *People vs. Alaban*, G.R. No. 97431, September 28, 1992, 214 SCRA 301.

[17] See *People vs. Ramon Chua Uy*, G.R. No. 128046, March 7, 2000, 327 SCRA 335.

[18] See G.R. No. 139615, May 28, 2004 at 24.

[19] See *People vs. Tira*, *supra.*; *People vs. Bagares*, G.R. No. 99026, August 4, 1994, 235 SCRA 30, 38; *People vs. Cañeja*, G.R. No. 109998, August 15, 1994, 235 SCRA 328, 340; *People vs. Constantino*, G.R. No. 109119, August 16, 1994, 235 SCRA 393-394; and *People vs. Tranca*, G.R. No. 110357, August 17, 1994, 235 SCRA 455, 466.

[20] *People vs. Crespo*, G.R. No. 121003, April 20, 1998, 289 SCRA 255, 264.

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