PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN CONCEPCION Y JACINTO, JIMMY ALMIRA Y BALDONADO, HAROLD CONCEPCION Y SIOCO, AND JOEY ALMODOVAR Y CAPUSO, ACCUSED-APPELLANTS.

G.R. No. 133225. July 26, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For selling Methamphetamine Hydrochloride commonly known as Shabu to a poseur-buyer, Edwin Concepcion y Jacinto, Jimmy Almira y Baldonado, Harold Concepcion y Sioco and Joey Almodovar y Capuso were charged with Violation of Section 21 (b), Article IV in relation to Section 15 of R.A. No. 6425, as amended, otherwise known as the Dangerous Drugs Act, in an information[1] which alleges -

> That on or about March 22, 1996 at Brgy. Maytalang I, Municipality of Lumban, Province of Laguna and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating, and mutually helping one another not being licensed or authorized by law, did then and there wilfully, unlawfully and feloniously transport and deliver to a NARCOM poseur-buyer Methamphetamine Hydrochloride (SHABU) weighing 574.56 grams contained in a self-sealed plastic bag, a regulated drug, in violation of the aforementioned law.
>
> CONTRARY TO LAW.

Upon arraignment, all accused pleaded "Not Guilty" to the offense charged.[2] The case thereafter proceeded to trial. After trial, the court a quo rendered judgment, the dispositive[3] portion of which reads:

> WHEREFORE, premises considered, the Court finds all the accused guilty beyond reasonable doubt of having committed the offense charged in the information (conspiracy in the delivery and transport of methamphetamine hydrochloride), and considering that the drug (shabu) involved is 574.56 grams, there being no mitigating or aggravating circumstances in the commission of the same, they are hereby sentenced to suffer the penalty of reclusion perpetua and to pay a fine of FIVE HUNDRED THOUSAND PESOS (P500,000.00) each without subsidiary imprisonment in case of insolvency, and to pay the costs.
>
> The exhibit Methamphetamine Hydrochloride (shabu) is hereby forfeited and confiscated in favor of the government and the Officer in Charge of this Court or his duly authorized representative is hereby ordered to deliver the said exhibit, within ten (10) days from the date of the promulgation, to the Dangerous Drugs Board, Manila, for proper disposition.
>
> Considering that herein accused have undergone preventive imprisonment, being detention prisoners, and there being no evidence to show that they are recidivists, they shall be credited in the service of the sentence with the full time during which they have undergone preventive imprisonment, had they agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners, otherwise, they shall be credited only with four-fifths (4/5) of the time during which they have undergone preventive imprisonment, as provided for in Art. 29 of the Revised Penal Code, as amended.

SO ORDERED.

Dissatisfied, accused-appellants interposed this appeal alleging that -

- THE TRIAL COURT ERRED IN NOT HOLDING THAT THE ACCUSED-APPELLANTS WERE MERE VICTIMS OF A POLICE FRAME-UP.

- THE TRIAL COURT ERRED IN NOT ACQUITTING THE FOUR (4) ACCUSED.

The facts of the case as summed by the trial court are as follows:

During the trial, it was established that prior to March 22, 1996, and subsequent thereto, prosecution witnesses, Police Inspector Isagani Montalbo Latayan (Latayan for short) and SPO2 Marcelino Perez Male, (Male for brevity) are members of the Fourth Narcom Regional Field Unit, PNP Narcotics Command, with office at Camp Vicente Lim, Calamba, Laguna. Their main duty as Narcom agents is to conduct operations against violation of the Dangerous Drugs Act of 972, as amended.

That for quite a time, their office was already receiving information from confidential informants, and lately from concerned citizens of Lumban, Laguna, about the rampant illegal drug activities at Barangay Maytalang I, Lumban, Laguna. Already fed up, on the first week of February 1996, Barangay Captain Alfredo F. Alcantara of Maytalang I, together with several Barangay Kagawad, and concerned citizens reported and requested the Narcom Office to conduct operation to go against those persons indulging in illegal trade. Thus, the Chief of Office, Police Superintendent Joseph Roxas Castro directed Latayan to form and head a team to conduct surveillance in the area to confirm the report. Consequently, Latayan directed Male to personally conduct the surveillance. After two (2) weeks, proper basis for the report was gathered, with the information that one alias Jimmy from Sta. Rosa, Laguna, as the person delivering the stuff. Thereafter, plan to arrest him and his group was prepared.

Male did the tedious and risky job. Luckily, he was able to penetrate the group by pretending to be a pusher and joining their happenings until he gained their trust. Come, March 20, 1996, at around 9:00 to 10:00 o'clock in the morning, he was introduced by his contact man (Andres Manambit alias Boy Manambit) to one of the sources of shabu in the name of Jimmy at the latter's house at Barangay Aplaya, Sta. Rosa, Laguna. On the same occasion, a sale of shabu was perfected between the two, in the presence of Andres Manambit and a certain Joey, with Jimmy to deliver to Male one half (1/2) kilo of shabu at a price of P1,000.00/gram. Likewise, on that instance, Jimmy called up somebody through telephone telling the person at the end of the line that the deal was okay. They parted with the agreement that Jimmy will bring the stuff to Lumban, Laguna, together with his manager and that Male will prepare the money.

Report of the development was immediately made to Latayan who headed a team composed of Male, SPO1 Patag, SPO1 Guevarra and Yatco, to Barangay Maytalang I, Lumban, Laguna, at around 2:00 o'clock in the afternoon and waited together with some Barangay Officials, the arrival of accused/pushers at the place of a certain alias Daboy Manambit (Narcom's Agent/Informer), and the cousin of Andres Manambit. At around 1:00 o'clock in the morning of March 22, 1996, Jimmy arrived alone. Male and Jimmy talked to each other and the latter asked if the money is ready. Male responded in the affirmative to which Jimmy replied "If the money is ready, I will fetch my manager", and left the place. After about ten (10) minutes, a white Toyota car with Plate No. TSZ-227 arrived. Jimmy first alighted from the car followed by three (3) others, who introduced themselves by the name of Edwin, Harold and Joey. The two (Male and Jimmy) proceeded to the terrace of the house of Daboy followed by the three. Male asked Jimmy if the stuff was with him, and Jimmy answered by pointing to Edwin as their manager, and added that the order was with them. Male and Edwin greeted each other. Male asked Edwin if he can see the stuff, who answered "yes" then showed and gave Male one (1) blue clutch bag. Edwin even told Male to see if it is real. For their part, Joey and Harold also asked Male if the money is ready and he answered "yes". Male opened the clutch bag and saw the plastic bag containing shabu. Thereafter, as a pre-arranged signal to his colleagues, Male pulled out a handkerchief from his pocket and

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wiped his face. With signal he gave, the members of the arresting team approached them, and arrested the four (4) accused, and brought them to their headquarters at Calamba, Laguna.

Accordingly, the one half (1/2) kilo of shabu (Exhibit "L-2") handed to Male was submitted to the PNP Crime Laboratory, Regional Unit IV, Camp Vicente Lim, Calamba, Laguna, upon formal request dated March 23, 1996 (Exhibit "J") of Pol. Supt. Joseph Roxas Castro for laboratory examination, and Chemistry Report No. D-186-96 dated March 23, 1996 submitted by Forensic Chemist Mary Jane H. Geronimo, (Exhibit "A" also marked as Exhibit "K"), approved and noted by Pol. Supt. Rafael P. Roxas, Regional Chief, shows a findings (sic) that qualitative examination conducted on the specimen gave positive result to the test for the presence of methamphetamine hydrochloride (shabu), a regulated drug, which findings (sic) was testified to by the said Forensic Chemist. Be that as it may, Barangay Captain Alfredo F. Alcantara said, the shabu presented and submitted to the Court by the Forensic Chemist is not the same shabu taken from the accused during the arrest, the latter being fine in quality.

Likewise, urine samples were taken from the four (4) accused and were examined by the aforementioned forensic chemist to determine the presence of prohibited/regulated prescription drug, and per Chemistry Report Nos. DT-075-96 (Exhibit "D") and DT-076-96 (Exhibit "C") for accused Joey Almodovar y Capuno and Edwin Concepcion y Jacinto, respectively, both dated March 24, 1996, qualitative examination conducted gave positive result to the test for the presence of Methamphetamine Hydrochloride, a regulated drug. As far as the other accused are concerned, no result of examination was presented. Booking sheets, arrest reports, receipt of property seized, and finger printings (Exhibits "F" to "I-1") are also prepared and conducted of the four (4) accused for purposes of record.

The records further show that per order dated January 9, 1997, Male's testimony (as recalled witness) and that of Pol. Supt. Joseph Roxas Castro for the identification of the shabu were dispensed due to accused and counsel's admission of their would be testimony to the effect that the shabu Male and his group had confiscated from the accused is the same shabu examined by the Forensic Chemist and submitted to the Court (TSN January 9, 1997) which stipulation amounts to judicial admission under Rule 129, Section 4 of the Rules of Court. People versus Cristina Hernandez (supra).

On the contrary, the accused are in unison when they testified that they were framed-up by the Narcom agents, thus, denying the charge against them. That on March 21, 1996, they went to the house of Mila Almira Flores (relative of accused Jimmy B. Almira) at Barangay Maytalang I, Lumban, Laguna, to request her to accompany them to buy barong tagalog. Arriving at the house of Mila at around 4:00 o'clock in the afternoon, they were informed by Mila that the storeowner was not around which prompted them to return home. However, while negotiating the national road at Barangay Maytalang I, at around 5:00 o'clock in the afternoon they chanced Boy Manambit who greeted them, so they stopped the vehicle. While still on board, military officers numbering around twenty (20) unexpectedly and suddenly arrived. Upon seeing the military officers, Boy Manambit ran toward his house but was chased and arrested by some of the militia men. Thereafter, they turned their ire on them and ordered them to alight from the vehicle with guns pointed at them. They were then brought to the house of Boy Manambit. Thereat, they saw Boy handcuffed. From the arresting officers, they heard that shabu was found at the house of Boy Manambit. After talking for about an hour with the arresting team, Boy Manambit's handcuffs was removed and he was released. Confused of what was happening, the military officers in turn handcuffed them and they were brought to the Barangay Captain for allegedly having in possession of shabu. As a natural reaction, they denied the accusation but the arresting team continued insisting that they were in possession of shabu. After that, in the early morning of March 22, 1996, they were brought to the Narcom office at Canlubang, Laguna, and were detained for about three (3) days. They were detained for more or less twenty (20) days before they were finally brought to the Provincial Jail, Sta. Cruz, Laguna, which became their shelter to this day.

Accused-appellants insist that the trial court erred in convicting them of the crime charged because there were glaring circumstances which cast serious doubt on their culpability. They claim that they are merely victims of a

police frame-up.

According to accused-appellants, the following "are glaring circumstances which cast serious doubts" as to their guilt:

> a.]
>
> While travelling along the national highway at Barangay Maytalang, Lumban, Laguna going towards the direction of Manila, the car on which the accused rode was flagged down by an unidentified man upon which when they stopped, police officers suddenly appeared and apprehended the unidentified man;
>
> b.]
>
> For reasons unknown to them, all four accused-appellants were also apprehended;
>
> c.]
>
> During the investigation conducted at the Barangay Hall of Maytalang, Lumban, Laguna, the unidentified man who flagged down the accused-appellants and who first arrested by the police mysteriously disappeared;
>
> d.]
>
> As a consequence, the accused-appellants were instead charged for a crime they did not commit;
>
> e.]
>
> The shabu specimens allegedly confiscated from the possession of the accused were the subject of substitution and this fact of substitution was admitted in open court by no less than the forensic chemist and confirmed by the Barangay Chairman of Maytalang, Lumban, Laguna; and
>
> f.]
>
> The fact of substitution was never explained by the prosecution, hence, the guilt of accused-appellants was not established beyond reasonable doubt.

We disagree.

The defense of frame-up or denial, like alibi, has invariably been viewed by the courts 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.[4] For such a defense to prosper, the evidence must be clear and convincing.[5]

What is 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.[6] In this regard, in a prosecution for illegal possession of dangerous drugs, it must be shown that: 1.] the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; 2.] such possession is not authorized by law, and 3.] the accused freely and consciously possessed the said drug.[7]

In this case, prosecution witnesses were able to establish these elements. SPO1 Marcelino Male, the designated poseur-buyer in the entrapment operation testified as follows detailing the manner it was conducted:

> Q
>
> What action did you take if any, after you discover[ed] that really there was rampant selling, using and buying of illegal drugs on (sic) the said place?
>
> A

After we learn[ed] of those things, we immediately make (sic) a report to our chief of Office and he ordered us to conduct [an] operation wherein we must apprehend the real supplier or source of the shabu or methamphetamine hydrochloride, sir.

Q

What did you do if any when you were ordered by your superior to investigate. . . to make surveillance in order to know who or where those shabu or illegal drugs were coming?

WITNESS:

I was instructed by Isagani Latayan to penetrate to (sic) the group of pusher[s] and user[s] of the said barangay and I introduced myself as one of the drug pusher[s], sir.

Q

Could you please tell us how you were able to penetrate to this people engaged in drug pushing?

A

I pretended as one of the drug pusher[s] and I join[ed] their happenings until I gained their sympathy, sir.

Q

What happened next when they already trusted you and according to you, you gained their trust and sympathy?

A

On March 20, 1996, I was introduced by my contact to one of their sources of shabu, sir.

Q

Could you please tell us the name of that person or that man who [was] introduced to you by your contact to be the source of illegal drugs?

A

The man alias Jimmy was introduced to me, from Sta. Rosa, Laguna, sir.

PROS. ARCIGAL:

Could you please tell us where did you first met (sic) this alias Jimmy, which is (sic) from Sta. Rosa, Laguna?

WITNESS:

I met him at Sta. Rosa, Laguna, my contact brought me at (sic) Sta. Rosa, Laguna and I was introduced to Jimmy, sir.

Q

What happened there at Sta. Rosa when you were introduced by your contact to a certain alias Jimmy?

A

Jimmy and I had a transaction and I ordered from him one half (½) kilo of shabu and he told me that the price per gram is one thousand (P1,000.00) pesos, sir.

Q

What was the answer of this alias Jimmy when you ordered to him one half (½) kilo of shabu for one thousand

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(P1,000.00) pesos per gram?

A

He telephoned somebody and he told to the person on the telephone that the deal is okay, sir (ayos na ang deal) that they will bring the stuff at (sic) Lumban, Laguna and we have to be prepared for the money and he will accompany his manager to bring the stuff, sir.

COURT:

By the way, where in Sta. Rosa [did] that transaction took (sic) place or you talked to Jimmy, where in particular?

WITNESS:

In the house of Jimmy, your Honor.[8]

x x x x x x x x x

COURT:

Who was present when you talked to alias Jimmy and ordered this one half (½) kilo of shabu?

A

The persons present during that time were my contact, Jimmy, Joey and me, your Honor.[9]

x x x x x x x x x

Q

What date was that when you proceeded to Lumban, Laguna, more or less at around 2 o'clock in the afternoon and positioned yourself waiting for the arrival of the pushers?

A

We arrived at Lumban, Laguna at 2 o'clock in the afternoon on March 20, 1996.

Q

How long did you stay in that said place?

A

We waited there and the group arrived on March 22, at around 1 o'clock in the morning, sir.[10]

x x x x x x x x x

Q

What happened at around 1 o'clock on the said date, Mr. Witness, while waiting on (sic) that said place?

A

At 1 o'clock early in the morning, Jimmy arrived alone, sir.

Q

What happened when Jimmy arrived alone?

A

He talked to me and asked me if the money is ready, sir.

Q

What was your reply to him?

A

I answered him, yes.

Q

What happened when you replied to him that the money is ready?

A

If the money is ready, he will fetched (sic) his manager, sir.

Q

How long did you wait for Jimmy?

A

Only more or less 10 minutes and then a white toyota arrived, sir.

Q

Who were on board the said white toyota?

A

Jimmy first alighted from the white toyota then [he was] followed by three (3) men who were introduced to me by the name of Edwin, Harold and Joey, sir.

PROS. ARCIGAL:

What did you do when you first saw Jimmy alighted from the white toyota car?

A

We talked and we proceeded to the terrace, followed by the three (3) men, sir.

Q

Could you please tell us what did you talk about?

A

I asked them if our order was with them, sir.

Q

To whom did you ask (sic) that particular question, Mr. Witness?

A

I asked Jimmy, sir.

Q

Could you please tell us the reply of Jimmy?

A

He pointed to a person by the name of Edwin to be their manager and answered that that order was with them, sir.

Q

What happened next when Jimmy pointed to his manager named Edwin?

A

We introduced each other and I asked him if I can see the stuff, sir.

Q

And the reply of Edwin, Mr. Witness, what was his reply?

A

He answered "yes" and he showed me one blue clutch bag, sir.

Q

What did you do with that clutch bag, colored blue, I am referring to Edwin, what did he do?

A

He gave it to me and told me to see if it is real, sir.

Q

What was inside that blue clutch bag, shown to you by Edwin?

A

As I opened it, I saw a plastic bag containing suspected shabu, sir.

Q

What else did you do after seeing clutch bag, containing plastic bag with suspected shabu?

A

Upon seeing the contents of that blue clutch bag, I pulled out my handkerchief from my pocket and wiped my face as a pre-arranged signal to my colleague, sir.

Q

At that time, that Edwin handed to you that blue clutch bag, where was Joey at that time?

A

Joey was near me as well as the other two (2), Harold and Jimmy, sir.

Q

How about Jimmy, where was he at that time when Edwin handed to you that blue clutch bag?

A

We were near each other at the terrace.

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Q

Did Joey say anything, at that time Edwin handed to you that clutch bag?

A

When Jimmy handed to me the clutch bag, Joey and Harold asked me if the money is ready, sir.

PROS. ARCIGAL:

Could you please tell us what was your reply when Joey and Harold asked you about the money?

A

I answered them "yes" the money is ready but I want to see first the stuff if it is real," sir.

Q

How about Jimmy, did he say anything?

A

Jimmy say (sic) nothing, sir.

Q

What happened after you made that pre-arranged signal to your colleague?

A

After my pre-arranged signal, the group in positioned approached the suspect and they were arrested, sir.

Q

How about you, what did you do if any when your companions approached the suspect?

A

I introduced myself that I am a police officer (sic) and I helped them in arresting the suspects, sir.

Q

Mr. Witness, at that time the suspect were being arrested, where is that blue clutch bag containing suspected shabu?

A

When we arrested the suspects, the blue clutch bag was in my possession, sir.

The foregoing testimony of SPO1 Marcelino Male was corroborated on material points by Inspector Isagani Latayan, Head of the Special Operations Team of the 4[th] Narcotics Regional Unit[11] who was assigned to conduct the operation and was part of the buy-bust team itself.[12] Inspector Latayan remained steadfast and unwavering on cross-examination despite intense grilling from defense counsel and repeated attempts to throw him off track.[13]

Police Senior Inspector Mary Jean H. Geronimo, a Forensic Chemist assigned at the PNP Crime Laboratory at Camp Vicente Lim, Calamba, Laguna confirmed that the suspected regulated drugs seized from accused-appellants were indeed Methamphetamine Hydrochloride or Shabu. She testified thus in open court:

PROS. ARCIGAL:

x x x x x x x x x

Q

On March 23, did you recall if you reported for work?

A

Yes, sir.

PROS. ARCIGAL:

While you were in your office on the said date, did you recall of any unusual communication you received?

WITNESS:

Yes, sir.

Q

What kind of communication are you referring to?

A

One of the letter[s] I received sir, is from the requesting party, of the Chief PNP Narcom, 4th Narcotics Regional Field Unit, Camp Vicente Lim, Calamba, Laguna, dated 23 March 1996, sir.[14]

x x x x x x x x x

Q

What was enclosed in this letter request, what was attached therein?

A

Together with the letter request is the said specimen inside this plastic bag was a specimen (sic). The specimen was a blue colored travelling bag, sir and inside this travelling bag blue colored was the said specimen, sir.

PROS. ARCIGAL:

What did you do if any, after you received this letter request together with the blue clutch bag as what you have said, containing the allege[d] regulated drugs?

WITNESS:

First, I checked if it is (sic) properly logged together with the letter request then I put markings in the letter request. I weigh the sample and I put markings also on the said specimen and I conducted three (3) kinds of test[s], sir.

x x x x x x x x x

Q

What kind of test[s] did you conducted (sic) on the subject stuff?

A

I conducted the three (3) kind[s] of test[s], sir. First, the physical test; second, is the chemical test and third is

the confirmatory test, sir.[15]

x x x x x x x x x

Q

How did you conduct this physical test?

A

In [the] physical test, I take (sic) a representative sample from said specimen, subject (sic) it under the microscope to determine its physical characteristic and I observe it, lack [of] shadow on the side of the crystals and only shabu has this positive result, so I'm only positive that specimen is positive for physical test, sir.

Q

And your conclusion is that, after conducting the physical test?

A

Not yet, sir. I should conduct the [other] two (2) test[s] and the second test is the chemical test. In this chemical test, another representative sample was taken from the said specimen using two (2) reagents. A blue coloration was produced and on the first reagent, we called it the simons reagent, sir. And on the second reagent, we call this the marquis reagent. A[n] orange to brown coloration was produced and I observed that the blue coloration and orange to brown coloration was produced in this specimen. So my findings was that the second test, the chemical test, is positive to the specimen, sir.

PROS. ARCIGAL:

How about with respect to the third test?

A

The third test, we called it the confirmatory test. Tin layer chromatography test, TLC for short, in this test another representative sample was taken, extract it with chloroform, spot it in a tin layer, chloromatography plates, side by side with the standard and I used methamphetamine hydrochloride, shabu, as the standard and placed it on a developing tank or chamber using benzyl as the solvent after which [I] removed it from the tank and let it dry, then spray[ed] it with iudoplatinic acid as the sprayer or visualizer, then let it dry again then compare the color and the distance travelled of that of the standard and that of the specimen and I observed that the standard and the specimen has the same color and substance revealed, so I'm already confirmed that the said specimen is positive to the test for the presence of methamphetamine hydrochloride shabu, sir.[16]

We agree with the trial court that accused-appellants' behavior during that entrapment operation shows clearly that there was conspiracy between them. It is an established rule that direct proof to show that the accused had come to an agreement to commit a felony is not necessary.[17] Conspiracy may be inferred from the conduct of all accused before, during and after the commission of the crime.[18] More explicitly -

A conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it.[19] Proof of the agreement need not rest on direct evidence as the same may be inferred from the conduct of the parties indicating a common understanding among them with respect to the commission of the offense. It is not necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or the details by which an illegal objective is to be carried out.[20] It may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.[21]

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As aptly observed by the trial court, accused-appellants' being together at the early dawn of March 22, 1996 at around 1:00 a.m. all the way from Sta. Rosa, Laguna to Barangay Maytalang I, Lumban, Laguna for the delivery of the shabu, and the established participation of each of the accused-appellants before, during and after the delivery of the drug signified their concerted efforts and cooperation towards the attainment of the criminal objective. As has been stated earlier, Jimmy was the one with whom SPO1 Male, the poseur-buyer, transacted for the sale of the shabu while Edwin acted as the manager of the group. Joey and Harold's knowledge and concurrence to the transaction were shown by their eagerness to ascertain if the money was ready.

The Court is also not persuaded that the samples examined were not taken from the drugs seized. On the contrary, the testimonies of the prosecution witnesses SPO1 Marcelino Male and Police Inspector Isagani Latayan fairly established that the shabu taken from the appellants is the same substance examined by the forensic chemist and later presented as evidence in court. As such, their testimonies to this effect should be accorded more credence than accused-appellants' bare denials. Certainly, the presumption of regularity must prevail over accused-appellants' unfounded allegations.[22] Furthermore, as pointedly observed by the trial court:

> In addition, the testimony of Barangay Captain Alfredo F. Alcantara, which was pointed out by the defense in the demurrer to evidence to the effect that the specimen shabu examined and presented to the court by the forensic chemist is not the same shabu confiscated from the accused will not in any way negate the findings. The flow of shabu from the hands of Male to the forensic chemist had been clearly demonstrated. Be it noted, that Male and Pol. Supt. Joseph Roxas Castro's testimonies for the identification of the shabu were dispensed with due to the accused's admission of their would be testimony, as stated earlier (order dated January 9, 1997). Moreover, the Barangay Captain's testimony will not prevail over that of Male (poseur buyer and arresting officer) who had seen and touched the shabu. The Barangay Captain is a mere witness to the arrest leading to the confiscation of the shabu.
>
> The circumstances that some of the persons through whose hands the seized items had passed were not presented as witnesses before the trial court, is not by itself sufficient to show that the contents of the packets had been switched, or that the packets which had been taken from appellant Fabian had been substituted with other packets containing "shabu". In the first place, all the persons who obtained and received the tin foil packets did so in the course of the performance of official duties. The presumption that official duty was regularly performed was not overthrown by appellant's counsel. There was no showing that the original packets contained some substance other than "shabu" and that the original packets were switched for the packets actually delivered to and chemically examined by Police Chemist Lina Sarmiento. It is not indispensable that the prosecution allege and prove every single fact of the case. Once the facts upon which a presumption established by the law stands are shown, it is incumbent upon adverse party to overthrow that presumption by sufficient and convincing evidence; a mere allegation is not evidence and is not adequate to dissolve the presumption.[23]

Similarly, the accused's other contention in the demurrer to evidence that show money is wanting should be taken with a grain of salt considering the settled jurisprudence in the buy-bust operation that marked money is not necessary.

> Absence of marked money would not create a hiatus in the prosecution's evidence as long as the prohibited stuff was presented before the trial court.[24]
>
> The presentation in Court of "marked money" used in "buy-bust operations" is not indispensable in drug cases for the offense is committed by mere act of delivery or transfer of the prohibited drug and the consideration for the transaction is of no moment.[25]
>
> The court several times stressed that the offense of illegal sale of prohibited drug is committed once a sale transaction was consummated. The presence of actual monetary consideration is not indispensable for the existence of the offense. In People vs. de la Cruz, the court stated that when a police officer went through the

> motions of buying prohibited drugs and his offer to buy was accepted by the accused-seller, the crime was consummated by mere delivery of the drug purchased. The fact that no money was actually delivered by the pretended buyer to the accused-seller did not prevent the offenses from being committed.[26]

Moreover, the herein accused are charged of (sic) delivering and transporting Methamphetamine Hydrochloride (shabu) which is consummated by the mere act of passing/transporting to another with or without consideration.[27]

Against the foregoing formidable array of inculpatory facts, all accused-appellants could muster are their feeble denials and excuses. Suffice it to state in this regard that "[C]ategorical, consistent and positive identification, without any ill motive on the part of the eyewitness, prevails over unconvincing alibi and unsubstantiated denials. These latter testimonies are self-serving statements undeserving of weight in law."[28]

All told, an overall scrutiny of the records of this case leads us to no other conclusion than that the trial court was correct in holding that the accused-appellants, acting together, committed the crime charged. It is an established rule that when it comes to the issue of credibility of witnesses, the appellate courts generally will not overturn the findings of the trial courts. They are in the best position to ascertain and measure the sincerity and spontaneity of witnesses through their actual observation of the witnesses' manner of testifying, demeanor and behavior in court.[29] In this case, we find no basis to depart from the established rule. What remains to be determined is the correctness of the penalty imposed on the felony committed.

In finding accused-appellants guilty beyond reasonable doubt of the crime charged, the trial court sentenced them to suffer the penalty of reclusion perpetua and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos.

It needs be stressed in this regard that under R.A. No. 7659, the penalty to be imposed depends on the quantity of the drug. The sale of 750 grams or more of the dangerous drug became punishable by reclusion perpetua to death.[30] The penalty for the sale of less than 750 grams of the dangerous drug was reduced to a range of "prision correccional to reclusion perpetua, depending upon the quantity" of the drug.[31]

More explicitly, in the 1994 case of People v. Simon y Sunga,[32] we held that for drugs with quantities weighing 750 grams or more, and for drugs with quantities weighing below 750 grams, reclusion perpetua could not be imposed twice.[33] The penalty of "prision correccional to reclusion perpetua" for drug offenses where the quantity involved is less than those enumerated in the first paragraph of Section 17, R.A. No. 7659 was construed as "prision correccional to reclusion temporal."[34] This was the range of the imposable penalty for drugs weighing less than 750 grams and the proper penalty depended on the quantity of the drug involved. If the drug weighs less than 250 grams, the penalty to be imposed is prision correccional; from 250 grams to 499 grams, prision mayor; and from 500 grams to 749 grams, reclusion temporal.[35]

In this case, the amount of shabu for which accused-appellants were convicted was 574.56 grams. The imposable penalty for this amount under the Simon ruling is reclusion temporal. There being neither generic mitigating nor aggravating circumstances, the penalty of reclusion temporal shall be imposed in its medium period.

Applying the Indeterminate Sentence Law, the minimum shall be within the range of the penalty next lower in degree which is prision mayor. No fine is imposable in this case because it is meted as a conjunctive penalty only if the penalty is reclusion perpetua to death.[36]

WHEREFORE, the decision of the Regional Trial Court of Santa Cruz, Laguna, Branch 91, in Criminal Case No. SC-6011, finding all the accused-appellants guilty beyond reasonable doubt of the crime of Violation of Section 21 (b), Article IV, in relation to Section 15 of R.A. No. 6425, as amended, is hereby AFFIRMED with the following MODIFICATIONS:

1.] The fine of Five Hundred Thousand (P500,000.00) is hereby DELETED; and

2.] Accused-appellants are hereby sentenced to suffer the indeterminate penalty of imprisonment ranging from Thirteen (13) years, One (1) month and Ten (10) days of Prision Mayor to Seventeen (17) years and Four (4) months of Reclusion Temporal.

The Decision appealed from is AFFIRMED in all other respects.

SO ORDERED.

Puno, Kapunan, and Pardo, JJ., concur.
Davide, Jr., C.J., (Chairman), on official leave.

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[1] Record, p. 38.

[2] Ibid., p. 44.

[3] Id., pp. 175-176.

[4] People v. Leila Johnson y Reyes, G.R. No. 138881, 18 December 2000, citing People v. Sy Bing Yok, 309 SCRA 28 [1999]; People v. Carol M. Dela Piedra, G.R. No. 121777, 24 January 2001; People v. Emerson Tan y Beyaou, et al., G.R. No. 133001, 14 December 2000; People v. Ricky Uy y Cruz, G.R. No. 129019, 16 August 2000; People v. Ramon Chua Uy, G.R No. 128046, 7 March 2000; People v. Diolo Barita y Sacra, G.R. No. 123541, 8 February 2000; Espano v. CA, 288 SCRA 558 [1998].

[5] People v. Zheng Bai Hui @ Carlos Tan, et al., G.R. No. 127580, 22 August 2000; Asuncion v. CA, 302 SCRA 490 [1999].

[6] People v. Boco, 309 SCRA 42 [1999], citing People v. Castro, 274 SCRA 115 [1997]; People v. Salazar, 266 SCRA 607 [1999]; see also People v. Requiz, 318 SCRA 635 [1999].

[7] People v. Chen Tiz Chang, 325 SCRA 776 [2000], citing People v. Khor, 307 SCRA 295 [1999], citing Manalili v. CA, 280 SCRA 400 [1997].

[8] TSN, 24 October 1996, pp. 8-11.

[9] Ibid., p. 11.

[10] Id., p. 12.

[11] TSN, 19 September 1996, p. 5.

[12] Ibid., pp. 6-17.

[13] Id., pp. 18-38.

[14] TSN, 16 December 1996, pp. 3-4.

[15] Ibid., pp. 5-6.

[16] Id., pp. 7-9; emphasis supplied.

[17] People v. Conde, 330 SCRA 645 [2000].

[18] People v. Castillo, 333 SCRA 506 [2000], citing People v. Ricafranca, 323 SCRA 652 [2000].

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[19] Article 8, Revised Penal Code.

[20] People v. Sanchez, 308 SCRA 264 [1999].

[21] People v. Francisco, 332 SCRA 305 [2000], citing People v. Andales, 312 SCRA 738 [1999].

[22] People v. Chen Tiz Chang, supra, citing People v. Sy Bong Yok, 309 SCRA 28 [1999].

[23] Citing People v. Fabian, 204 SCRA 730 [1991].

[24] Citing People v. Ong Co, 245 SCRA 733 [1995].

[25] Citing People v. Herrera, 247 SCRA 433 [1995].

[26] Citing People v. Fabian, supra.

[27] Record, pp. 174-175; RTC Decision, pp. 10-11.

[28] People v. Mittu, 333 SCRA 121 [2000], citing People v. Sala, 311 SCRA 301 [1999].

[29] People v. Jimmy Alo, et al., G.R. No. 125533, p. 8.

[30] Section 13 and Paragraph 1, Section 17, R.A. No. 7659.

[31] Cruz v. CA, 322 SCRA 518 [2000].

[32] 234 SCRA 555 [1994].

[33] Ibid., pp. 571-572.

[34] Cruz v. CA, supra.

[35] Ibid., p. 527, citing People v. Simon, supra and People v. Caco, 269 SCRA 271 [1997].

[36] People v. Elamparo, 329 SCRA 404 [2000], citing People v. Simon, supra.

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