PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDUARDO CHUA Y PANGAN AND YEE MIU SZE DICK @ “DICK,” ACCUSED-APPELLANTS.

G.R. No. 133789. August 23, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Appellants Eduardo Chua y Pangan and Yee Miu Sze Dick alias "Dick" were sentenced to death for violation of the Dangerous Drugs Act. They were accused of selling and delivering methylamphetamine hydrochloride, a regulated drug, in violation of Section 15, Article III,[1] in relation to Section 21, Article IV[2] of Republic Act No. 6425 as amended by Republic Act No. 7659. The Information against them, dated September 30, 1996 reads:

> That on or about the 27[th] day of September, 1996, in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to another Nine thousand eight hundred fifty eight and 60 (9,858.60) grams of Methamphetamine (sic) Hydrochloride (shabu), a regulated drug.
>
> Contrary to law.

Both pleaded not guilty upon arraignment.

At the start of the trial, the testimony of Police Inspector Isidro L. Cariño, the forensics chemist of the Philippine National Police Crime Laboratory in Camp Crame, was dispensed with. The parties agreed that the 9,858.60 grams of crystalline substances mentioned in the Information (Exhibits. "B-1" to "B-10"), and examined by the crime laboratory yielded positive for methylamphetamine hydrochloride or shabu.[3]

For the prosecution, three witnesses were presented: (1) Sr. Inspector Joel Pagdilao, (2) SPO2 Rolando Azurin, and (3) SPO2 Arsenio Mangulabnan. Their testimonies centered on an alleged "buy-bust" operation conducted by the Narcotics Command against appellants.

INSPECTOR JOEL PAGDILAO testified that on September 26, 1996, around 9:30 A.M., he reported to Camp Crame on instructions of P/Col. Raul Castañeda. He said he was told by a police informer that the informer had set a meeting at the lobby of the Diamond Hotel in Roxas Blvd., between 2:00 and 2:30 P.M. that day with one Eduardo Chua alias "Edward", a drug pusher interested in selling a large volume of shabu. The informer would introduce to Chua a potential shabu buyer. With this information, according to Pagdilao, Col. Castañeda ordered him to be at the lobby of the hotel. Then Castañeda called SPO2 Rolando Azurin of the Intelligence Service of the Narcotics Command to pose as the prospective buyer.

Later in the afternoon, at around 2:00 P.M., Pagdilao recounted that he entered the lobby of the hotel and sat in a sofa. A few minutes later, the informer and the expensively dressed and bejeweled Azurin arrived. Pagdilao said he saw the informer introducing Azurin to a person, later identified as Chua. The trio sat in one of the sofas in the

lobby and ordered what appeared to him as coffee. The three talked for about 30 to 45 minutes, then walked towards the entrance and left. Pagdilao recalled that he paid his bill but the three were gone when he got outside. He went to his car and radioed Azurin who reported that "Sir, it is positive,"[4] and that he had struck a deal with Chua. In the deal, according to Pagdilao's testimony, Chua agreed to sell Azurin ten kilos of shabu at P400,000.00 per kilo. A meeting for the sale and delivery of the shabu was set for the next day between 5:00 to 6:00 P.M.[5]

Pagdilao said he then returned from the hotel to Camp Crame. Col. Castañeda ordered him to form a team composed of SPO2 Arsenio Mangulabnan, one Inspector Maliwat, one SPO3 Marcelo and one PO3 Almerino to plan the "buy-bust". At around 8:30 P.M., they went to the PTA Bay Cruise Terminal Compound at Bucaneg St., near the premises of the Cultural Center of the Philippines (CCP), to familiarize themselves with the vicinity. Thereafter, they went back to their office and prepared the boodle money consisting of two bundles of fake money bills of cut newspapers, each bundle with two one thousand peso bills on top to simulate two bundles of P1,000,000.00 each. Azurin marked the thousand peso bills with the letters RBA.[6] On September 27, 1996, at about 10:00 A.M., Pagdilao met his team for a final briefing.

Pagdilao recounted that as planned, on September 27, 1996, Azurin arrived at the PTA compound at about 5:00 P.M. and parked his gold-colored Honda at the PTA compound approximately 50 to 70 meters from the end of the street facing Bucaneg Street. Maliwat on his motorcycle was nearby. Pagdilao said he arrived in his Cefiro car driven by Mangulabnan with Marcelo and Almerino as passengers. Marcelo and Almerino got off and posted themselves near Maliwat. Mangulabnan parked the Cefiro in front of the Honda approximately 10 meters away.[7] As they passed by the Honda, he saw Azurin smoking a cigarette. He was beside the Honda.

About 10 to 15 minutes later, a Toyota driven by appellant Dick, with appellant Chua on board, arrived. The Toyota parked alongside the left side of the Honda. By this time, according to Pagdilao's testimony, Azurin was already on the driver's seat of the Honda. Chua got off the Toyota and approached the Honda. According to Pagdilao, it seemed to him that Chua was looking for something inside the Honda. Later, he saw Chua approach Azurin. The latter got out of the Honda and with Chua, proceeded to the back compartment of the Toyota. He saw Chua get a green luggage bag from the compartment and hand it to Azurin. Azurin got the bag and placed it inside the back seat of the Honda. It was then he heard the beeper of the Voyager, a signaling device he had earlier equipped Azurin with. He waited for a while until he saw Azurin hand over the boodle money bag which he got from the back seat of the Honda to a person in the driver's seat of the Toyota. As soon as he saw the boodle money given to the man on the driver's seat, according to Pagdilao, he ordered Mangulabnan to block the front of the Toyota. He told the driver he was a police officer and he was placing them under arrest. At that time, he saw the driver who was Dick trying to untie the knot of the plastic bag containing the boodle money. As he arrested Dick, he informed the latter of his constitutional rights in English. Meanwhile, Azurin was arresting Chua. Chua and Dick were brought to Camp Crame.[8]

On September 28, 1996, Pagdilao said he sent the confiscated white crystalline substances for examination by the PNP Crime Laboratory. It found, according to him, that the confiscated substances were methylamphetamine hydrochloride or shabu, a regulated drug. The news of the arrest of Chua and Dick was published in the September 29, 1996 issues of major newspapers.[9]

During cross-examination, Pagdilao admitted that he did not actually see Azurin hand over the green boodle money bag to Dick but only "visualized it". He added that what transpired is also contained in Azurin's report of what actually happened.[10]

SPO2 ROLANDO AZURIN was the second witness for the prosecution. During direct examination, he testified that to his knowledge the informer who tipped them regarding Chua had previously given them information twice

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or thrice, but this was the first time he was participating in a buy-bust operation based on said informer's tip. He said he had participated as poseur-buyer in buy-bust operations about six times. He corroborated the testimony of Pagdilao on the meeting with the informer in Castañeda's office, the preparations made by the team, the meeting with Chua at the Diamond Hotel, the details of the exchange, the transfer of the shabu from the Toyota to the Honda at the PTA Bay Cruise Terminal compound, and the receipt of the boodle money bag by Dick, up to the arrest of the accused. When asked what language he and Chua spoke while they were in Diamond Hotel, he answered, "Broken English."[11]

During cross-examination, he stressed that it was on Chua's instruction that he handed the boodle money bag to Chua, and that it was Chua who had told him that they would meet at the PTA Bay Cruise Terminal compound at Bucaneg St. to make the exchange of the drug and the money bag.

The third prosecution witness was SPO2 ARSENIO MANGULABNAN, who corroborated the testimonies of Pagdilao and Azurin. He disclosed that it was Pagdilao who summoned him at around 6:00 P.M. on September 26, 1996 and informed him of a pending buy-bust. He confirmed that the team surveyed the compound and discussed where each member of the team would position himself during the bust. He also corroborated that the team prepared the boodle money and that Azurin was given a Voyager signaling device. He recalled who drove which vehicle, where each was positioned in the compound, how he witnessed Azurin and Chua go from the Honda to the Toyota, and how he blocked the Toyota after Pagdilao heard the signal from the Voyager. He also described how Chua and Dick were arrested. He disclosed that he later found out that the Toyota used by the accused (now appellants) was owned by a rent-a-car company.[12]

The defense presented its witnesses as follows: (1) SPO1 Edgar Balane, (2) PO3 Rolando Galve, (3) appellant Chua, and (4) appellant Dick. They denied the existence of a "buy-bust" operation and claimed that appellants were victims of an extortion attempt and "frame-up" by the NARCOM agents.

SPO1 EDGAR BALANE declared that on September 27, 1996 at around 5:00 P.M., he was on-duty in their headquarters in Block I Police Station behind the CCP. Right in front of their headquarters, he witnessed a car block the path of another. Then, the men in the intercepting car arrested the two occupants of the blocked car. Later, the men in the intercepting car identified themselves as NARCOM agents. After a NARCOM agent handcuffed one of the men arrested and tied the hands of the other, they all got in a car and sped away. Balane also recalled he saw a NARCOM agent open the trunk of the car that was blocked and got what seemed to him a milk box. Later, the agent got a plastic bag, the size of a long bond paper from the box and opened it. Balane said he was certain there was only one plastic bag.[13] Also, during his testimony, Balane drew a sketch, later marked as Exhibit 3,[14] of the vicinity where the incident allegedly took place and identified the positions of the vehicles in relation to the police headquarters and the PTA Bay Cruise Terminal compound. He reiterated that the incident took place in front of the headquarters.[15] When asked if the incident was entered in the police blotter of their station, he answered he was not sure.[16]

During cross-examination, he recounted that the NARCOM agents shouted, "FOLLOW UP LANG NAMIN ITO, GALING KAMI SA PHILIPPINE PLAZA."[17] Thereupon, he assisted the NARCOM agents by preventing people from getting near and by directing traffic. When asked if he ever noted the incident in his notebook that policemen always carry, he answered he did not since he did not have his notebook then. He also revealed that he did not know that the arrest of Chua and Dick was front-page news in the major dailies. He said none of his companions told him about it.[18] He also admitted that he did not check if the incident was entered in the police blotter.

PO3 ROLANDO G. GALVE was the second witness for the defense. He recounted that he was reading the

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newspapers inside the police station when he heard a commotion in front of their headquarters. When he went out of the station he saw two men. One had his hands handcuffed while the other man's hands were tied. According to Galve, as he drew his gun while acting as back-up of Balane, he asked the latter what was happening. Balane told him that he had accosted ("sinita") persons who turned out to be NARCOM agents apprehending two men. Asked to recall how many policemen were in the station that evening, Galve said he could not remember but he saw his commanding officer, Major Carlito Abogado, get out of his room during the commotion. He, however, did not notice Major Abogado outside the station during the commotion.

Appellant EDUARDO CHUA Y PANGAN, a Chinese national, was the third witness for the defense. He testified in Tagalog. He stated that on September 27, 1996, he was at the Philippine Plaza Hotel. Since it was the Chinese Moon Day Festival, a friend named Peter Co, a Chinese importer of fruits, invited him to meet at the hotel to purchase prizes for the festival and have a few drinks. He said he had met Co barely four months before September 27, 1996. They became friends and met occasionally at the Philippine Plaza Hotel. He clarified he did not know Co as well as he did Co's father.[19]

Chua recalls that at around 2:00 P.M. he was on board a taxi and picked up Dick to join him. They met with Co at the Philippine Plaza Hotel. Co was accompanied by a certain Mr. Lee. At about 5:00 P.M., Co invited the others to the Manila Bay Massage Parlor. They agreed that Chua would ride with Dick in Co's Toyota. Co and Lee would take Lee's car. As Dick was driving along Bucaneg St., Chua felt sick and closed his eyes. As he did, he was jolted when a Honda Civic blocked their car when they were about in front of Block 1, Police Sub-Station behind the CCP. A motorcycle then blocked their Toyota at the rear. Simultaneously, the men in the Honda alighted, drew their guns, told them to get out of the Toyota and ordered them to lie flat on the ground. One of the gunmen removed Chua's belt and used it to tie the latter's hands in front of him.[20]

According to Chua, the commotion drew the attention of SPO1 Edgar Balane who was in the nearby police station as well as PO3 Rolando Galve. The two rushed outside. A shootout between the two and the NARCOM agents almost ensued, prevented only when the NARCOM agents identified themselves and flashed their identification cards. Later, the NARCOM agents told Chua to open the trunk of the Toyota. They took out a box which when opened contained a travel bag the length of a long coupon bond paper. Chua denied ownership of the box.

Chua said they were taken to Camp Crame for detention. While on detention, the police tried to extort two million pesos (P2,000,000.00) from each of them and if they did not give the money by 3:00 P.M. the following day, he would be killed.[21] The next day they were brought to Camp Crame for a press conference, where for the first time, he said, they were shown the shabu allegedly contained in the bag within the box. On the third day of their arrest, they were brought to the Second Narcotics District Unit where they were fingerprinted and photographed. They were brought to the house of a Pasay City fiscal for inquest. He also added that the police punched him in his stomach a few times while he was on detention. Chua denied involvement in the alleged offense of drug trafficking.[22]

During cross-examination, Chua confirmed that he sold lumber to sawmills in Quezon province and Mindanao; and that he had known his co-accused Dick since September 27, 1996. Chua admitted that he had a house in Grace Village in Araneta Avenue, Quezon City, where he lived with his children. His wife sold ready-to-wear clothing in a store in Quezon Avenue, Lucena City. When asked about the Toyota car he was riding at the time of his arrest, he acknowledged he was familiar with it and that it belonged to Co. At this juncture, the prosecution showed him photographs of the car which were marked as Exhibits O to O-3,[23] and the rental receipt marked as Exhibit P, showing that on September 27, 1996, one Ed Tan with address at Quezon Avenue, Lucena City rented a blue Toyota Corolla XE with Plate No. TKD 862 from MI-ROL-MAC Transport Services, a rent-a-car company based in Taft Avenue, Manila.[24]

Appellant YEE MIU SZE DICK was the last witness for the defense. He essentially corroborated the story of Chua about being fetched by the latter, going to the Philippine Plaza Hotel, meeting Peter Co and Mr. Lee and using the car of Co to drive to the massage parlor where all four of them had met. He recalled that he felt their car, a Toyota, was sideswiped by the Honda car of the NARCOM agents as the Toyota passed in front of the police headquarters behind the CCP. He remembered uttering, "Putsa, binangga tayo ah.",[25] and seeing two policemen from the headquarters draw their guns and confront the NARCOM agents. He said that he refused to lie on the ground as ordered and angrily protested the bumping of their Toyota. As he was being handcuffed by the agents he informed the agents that the car was not their own. He noticed one person approach the rear of the Toyota car, pull out a box and place it on top of the car. He also added that on their way to Camp Crame, a police officer repeatedly hit him on the head with a shoe causing several lumps on his head. The officer took his wallet, watch, ring, necklace, ballpen and cellular battery.[26] He did not report his head lumps to anyone except to his wife and lawyer for fear of police retaliation. While detained, a police officer also demanded two million pesos (P2,000,000.00) from him in exchange for his release.[27] Later, they were brought to the home of a fiscal who conducted the inquest. He, however, stressed that the fiscal did not talk to them but only spoke to the police officers who appeared friendly with the fiscal.

During cross-examination, Dick added the information that he did not know Chua well but that the latter was a close friend of his father; that he had known Peter Co for only a month at the time they met at the Philippine Plaza Hotel; and that he met Mr. Lee, Co's companion, only then at the hotel. He also said that during the press conference, a woman journalist asked him if he thought they were framed up, but he had no chance to answer because the police led him away. He also stated he was examined by a doctor the following day, but he did not report the lumps on his head to the doctor because some policemen were present and he feared they would retaliate if he reported his mauling.

On February 12, 1998, after Dick's testimony, the prosecution recalled INSP. PAGDILAO as rebuttal witness. Pagdilao challenged the truth of Dick's version of appellants' arrest. He further informed the court that the rented Toyota car belonged to a Mrs. Violeta Lagrana[28] who was requesting for the release of the rented Toyota. The prosecution also pointed out that the address of the person who rented the Toyota was the same as the business address of Chua's wife in Quezon Avenue, Lucena City.

After Pagdilao's rebuttal testimony, the defense counsel objected to the presentation of the photograph of the car showing no dent which, according to the defense, was not indicative that there had been no interception by the police. The defense also objected to the prosecution's suggestion that there was a connection between the address of one Ed Tan who rented the Toyota and the business address of Chua's wife.[29]

The prosecution offered the following documentary evidence: Exhibit A, the letter/request of the Narcotics Command dated September 28, 1996 addressed to the Director of the PNP Crime Laboratory requesting for laboratory examination of the ten (10) transparent plastic bags containing shabu to show that the seized bags were immediately brought to the laboratory in Camp Crame for examination; Exhibit B, a green carry-on travel bag with trademark "Sunrise" where the 10 bags of the methylamphetamine hydrochloride were allegedly contained; Exhibits B-1 to B-10, ten (10) self-sealing plastic bags with markings, allegedly containing various amounts of methylamphetamine hydrochloride; Exhibit C, the initial laboratory report dated September 28, 1996 and Exhibit D, Physical Science Report No. D1135, dated September 28, 1996 of the crime laboratory, both to show that the specimens were examined and found positive as methylamphetamine hydrochloride or shabu, a regulated drug; Exhibit E, (Exhibits E-1-A to Exhibit E-2-B), two bundles of boodle money; Exhibit F, a 7-11 convenience store plastic bag; Exhibit G, with sub-markings Exhibits G-1 to G-6, the sketch by Pagdilao showing the vicinity of the Bay Cruise Terminal; Exhibit H, booking sheet of accused Eduardo Chua; Exhibit I, booking sheet of Yee Miu

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Sze Dick; Exhibits J to J-10, newspaper clippings of the "buy-bust"; Exhibit K, joint affidavit of arrest of P/S Insp. Pagdilao and SPO2 Mangulabnan; Exhibit L, sketch by Pagdilao showing lobby of Diamond Hotel; Exhibit M, sketch by Azurin showing the lobby of Diamond Hotel; and Exhibit N, sketch by Azurin of PTA Bay Cruise Terminal and the vehicles before the alleged buy-bust.[30]

When the defense made its formal offer of evidence, the prosecution objected not only against the alleged erroneous marking on the exhibits but also against the alleged purposes for which the exhibits and documents were presented. After amendments by the accused and subsequent objections to the amendments by the prosecution, the trial court admitted the following documentary evidence for the defense: Exhibit 1, the sketch by P/S Inspector Joel Pagdilao of the Diamond Hotel driveway; Exhibit 2, the sketch by SPO2 Azurin of the lobby of the Diamond Hotel and Exhibit 3 and sub-markings, the sketch by PO Balane of the area and street where the interception and the arrest of the accused (now appellants) allegedly took place. The trial court ordered the re-marking of Exhibit 3 as Exhibit 4, the sketch of the PTA Bay Cruise Terminal compound or the buy-bust scene by SPO2 Azurin.[31]

On April 15, 1998, the Pasay City Regional Trial Court, Branch 110 rendered its decision, decreeing as follows:

> WHEREFORE, the Court finds the herein Accused EDUARDO CHUA y PANGAN and YEE MIU ZSE DICK GUILTY beyond reasonable doubt of the offense of Violation of Section 15, Article III of Republic Act 6425, as amended, in relation to Section 20 of Article IV of the said law, and hereby imposes on each of them the supreme penalty of DEATH. The herein accused are further ordered to each pay a fine of P1,000,000.00 without subsidiary imprisonment in case of insolvency.
>
> The 9,858.60 grams of Methamphetamine Hydrochloride (Exhibits "B-1" to "B-10", et sequitur) are hereby confiscated in favor of the government, but in view of the fact that said "shabu" are still in the possession of the PNP Crime Laboratory, Camp Crame, Quezon City, its Director and/or Forensic Chemist P/INSP. ISIDRO L. CARIÑO is hereby directed to cause the transportation thereof to the Dangerous Drugs Board for proper disposition in accordance with law. Said official and/or P/INSP. ISIDRO CARIÑO is further directed to inform this Court of the action taken thereon within five (5) days from receipt hereof.
>
> SO ORDERED.

Hence, this automatic review of their sentences. Appellants Eduardo Chua and Yee Miu Sze Dick filed before us separate appeal briefs. Appellant Eduardo Chua avers the trial court committed the following errors:

> THE LOWER COURT ERRED IN GIVING WEIGHT AND CREDENCE TO THE THEORY OF THE PROSECUTION AND IN DISREGARDING THAT OF THE DEFENSE.
>
> THE LOWER COURT ERRED IN NOT ACQUITTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED.

In his appeal, Yee Miu Sze Dick asserts that the trial court erred:

> 1. ... IN GIVING CREDENCE TO THE VERSION OF THE PROSECUTION AND IN DISREGARDING THAT OF THE DEFENSE;
>
> 2. ... IN NOT ACQUITTING ACCUSED YEE MIU SZE DICK alias DICK OF THE OFFENSE CHARGED.

We shall first address the issues raised by appellant Chua before we look into appellant Dick's averments.

Appellant Chua, in raising the issue of credibility of the prosecution's evidence, stresses the following points: First, the lower court failed to appreciate the testimony of SPO1 Edgar Balane who testified that he witnessed the commotion in front of the police station at the back of the CCP complex where appellant and his co-accused were

arrested by the NARCOM agents; that what transpired was a "hulidap" (literally meaning arrest and hold-up) operation since the testimony of Balane corroborated Chua's story that the car of the NARCOM agents bumped the Toyota where appellants rode;[32] that the men who introduced themselves as NARCOM agents alighted from their car and pointed a gun at them; and that he and his companions were handcuffed and arrested. Second, the testimony of Azurin contained significant inconsistencies, particularly when Azurin said he seized the shabu from the rear compartment of the car, although he had earlier testified that he already had it in his possession.[33] Third, it was unbelievable that Azurin could, in just one meeting, gain the trust and confidence of a total stranger enough to close a deal involving the P4 million-peso drug sale.[34]

Chua faults the trial court for failing to appreciate the testimony of SPO1 Edgar Balane for the defense. Indeed, Balane's testimony contradicted that of the arresting officers on a material point: where the arrest took place. Balane claimed that the arrest took place on the street in front of the sub-station.[35] The prosecution witnesses, however, said that the buy-bust took place in the terminal compound parking area.[36]

The transcript of Balane's testimony[37] is replete with minutiae like the size, shape, and appearance of the objects taken from the car of the appellants. Yet he could not recall the make of appellants' car. This memory lapse regarding the car of appellants contrasts with his easy recollection of minute details of the bust. We find his recollection of such details incongruous and his testimony contrived. His declaration that the buy-bust took place in front of police headquarters raises serious doubt as to his credibility because this significant incident was not entered in the police blotter. Such entry concerning a buy-bust operation and the apprehension of Chua and Dick in front of the police headquarters would have firmed up Balane's claim. Absent any written record of the incident, Balane's testimony lacks persuasive force, even if corroborated lamely by another defense witness, PO3 Rolando Galve, who also failed to enter his observation in the police blotter. Given the selective memory displayed by Balane at the witness stand, we are not prepared to overturn the trial court's finding as to Balane's credibility. Such finding is entitled to great respect from appellate courts that do not deal with live witnesses but only with the cold pages of a written record.[38]

Appellant Chua also calls our attention to an alleged inconsistency in the testimony of prosecution witness Azurin. Chua said Azurin first declared he received from Chua the shabu at the rear compartment of Chua's car. But according to Chua, Azurin had previously testified that he already had in his possession the shabu.[39] What appears, however, as inconsistency in Azurin's testimony could also be taken as a result of miscommunication. We note that Azurin's testimony was straightforward, candid, and generally consistent even under gruelling cross-examination. We are inclined to view a slight variance in his answers as showing that his testimony is not rehearsed. Slight contradictions are badges against memorized perjury.[40]

Thirdly, we find plausible that Chua would trust Azurin regarding a drug deal worth P4 million after only a thirty-minute meeting. In a string of cases we have held that it is not uncommon for drug dealers to sell their commodities to total strangers heedless of time or place. Besides, the law does not prescribe as an element of the crime that the vendor and the vendee be familiar with each other. What matters in a drug-related case is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the sale and delivery of the prohibited drugs.[41] The law simply penalizes the actual sale of shabu.[42]

Like Chua, co-appellant Dick takes issue with the credibility of witnesses for the prosecution. The core of his defense is that the prosecution's version of the buy-bust transaction is so implausible, improbable and unnatural, so contrary to human nature and the natural course of things, that it ought to fall outside of judicial cognizance.[43]

Appellant Dick points out "improbabilities" in the prosecution's claim of what transpired during the buy-bust.

He argues that (1) it was unnatural that Chua who met Azurin only the day before would be content to just peep into the bag and merely take a cursory look at the boodle money without inspecting the payment closely;[44] (2) it was strange why Chua should hand the boodle bag to Azurin and tell the latter to give it to Dick who was seated in the driver's seat of Chua's car, parked on the left side of Azurin's car, farther than where Chua stood;[45] and (3) from where the back-up team was, it was not necessary for Azurin to give the boodle money to Chua nor was there time to give the money to Dick since the back-up team would have taken only three seconds to respond to the beeper.[46] Further, appellant Dick suggests that since the NARCOM did not expect Chua to bring along Dick, witnesses who were NARCOM agents had to implicate Dick in the deal and needed to detail in their testimony that Chua instructed Azurin to hand over the boodle bag to Dick.[47]

Appellant Dick stresses that it was improbable for his companion, Chua, to put his trust on Azurin who was a complete stranger to Chua only two days before. As earlier discussed,[48] drug pushers do not confine their nefarious trade to known customers; complete strangers are accommodated provided they have the money to pay.[49] Moreover, why a dealer would trust a buyer, which is to say the motive behind a drug deal, is not an essential element of the drug-related offense.

Appellant Dick faults the trial court's finding that the defense adduced no evidence to prove that the members of the NARCOM team nurtured any ill motive to fabricate charges against him. He points out also that the occurrence of an alleged buy-bust was placed in doubt and questioned by policemen Edgar Balane and Roland Galve whose police sub-station is located just behind the Cultural Center complex.[50] These two had testified that at 5:00 P.M. the appellants were arrested in front of their sub-station, and not in the PTA Bay Cruise Terminal as alleged by the buy-bust team. Appellant Dick submits that if indeed the team planned a buy-bust, then they could have informed Sub-station 1 to avoid any mistaken identity or untoward confrontation. Additionally, Dick argues that if indeed he was trading in drugs, it was reckless and unnatural for him to challenge the order of the arresting officer to lie down and instead get angry at them for bumping their car. Appellant avers that his challenge was indicative that he knew nothing of the shabu placed in the car he was in.

In essence, what appellant Dick puts at issue is the trial court's appreciation of factual details of the buy-bust. Suffice it to say that we have in numerous cases made clear the policy of this Court, founded on reason and experience, to sustain the factual findings of the trial court in criminal cases, on the rational assumption that it is in a better position to assess the evidence before it,[51] having had the opportunity to make an honest determination of the witnesses' deportment during the trial.[52] In Dick's case as also in Chua's own, we are not prepared to disbelieve and disregard the trial court's factual findings.

Appellant Dick also insists that he and Chua were travelling without committing any unlawful act, such that their arrest and any evidence obtained as a result thereof were inadmissible against them for being in patent violation of Section 2, Article III of the Constitution.[53]

On this score, the bare denial by appellants, a common defense raised in buy-bust operations, cannot overcome positive evidence to the contrary. Recall that among the evidence presented by the prosecution is the rental receipt of the Toyota car used by appellants when they were arrested, issued to one Ed Tan by the Mi-Rol-Mac Transport Services located in Quezon Avenue in Lucena City,[54] where co-incidentally appellant Chua's wife had a store. This circumstance coupled by the fact that the defense did not present on the witness stand appellants' friend Peter Co who they alleged merely lent them the car, casts serious doubt on the story of appellants. Further, while appellant Dick testified that the Toyota they were riding was sideswiped by the Honda of the police which allegedly hit the side mirror on the driver's side,[55] pictures of the car, presented as Exhibits O, O-1, O-2 and O-3,[56] to which the appellants did not object, showed no damage on the side mirror or any part of the vehicle.

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We are not unaware of the observation that in drug-related cases, the defense of frame-up coupled with "huli-dap" operation is often raised. But for this defense to prosper, the evidence in that regard must be clear and convincing.[57] Absent proof of any intent on the part of the police officers to falsely impute commission of a crime against appellants, the presumption of regularity in the performance of official duty, as well as the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, deserve to prevail over the bare denials and self-serving claims of appellants that they had been framed up.[58]

Neither can the claim of the accused of alleged extortion by the law enforcers be entertained. Without any proof shown, the defense's allegation of extortion allegedly committed by police officers could not be successfully interposed. It remains one of those standard, worn-out, and impotent excuses of malefactors in the course of the prosecution of drug cases.[59] What appellants could have done was prove the allegation and not just casually air it.

Finally, appellants insist that evidence obtained during their arrest is inadmissible as evidence. While we carefully considered this point, here we must reiterate that a buy-bust operation is a form of entrapment legally employed by peace officers as an effective way of apprehending drug dealers in the act of committing an offense. Such police operation has judicial sanction as long as it is carried out with due regard to constitutional and legal safeguards.[60] Here, the arrest of appellants has been shown to be within the confines of law, hence we find the contraband seized from appellants admissible in evidence.

In sum, the prosecution has established beyond reasonable doubt the guilt of appellants who must suffer the consequences of spreading a baneful plague of dangerous drugs menacing the nation, particularly the youth. The findings of the trial court, in our view, support amply the conviction of the appellants. The penalty imposed on them, however, requires modification.

Section 20, Article IV[61] of R.A. No. 6425, the Dangerous Drugs Act as amended by R.A. No. 7659 provides, in part, that the penalty in Section 15, Article III shall be applied if the dangerous drug involved is, in the case of shabu or methylamphetamine hydrochloride, 200 grams or more. The delivery or distribution of regulated drugs without proper authority is penalized under Section 15 of R.A. No. 7659 with reclusion perpetua to death and a fine ranging from P500,000.00 to P10,000,000.00. The law prescribes two indivisible penalties, namely reclusion perpetua to death. Hence, conformably with Article 63 of the Revised Penal Code,[62] the lesser penalty of reclusion perpetua is the proper penalty imposable since there were no mitigating nor aggravating circumstances attending appellants' violation of the law.[63]

WHEREFORE, the decision of the Regional Trial Court of Pasay City finding EDUARDO CHUA Y PANGAN and YEE MIU SZE DICK GUILTY BEYOND REASONABLE DOUBT of violation of Section 15, Article III, in relation to Section 21, Article IV of Republic Act No. 6425, as amended by Republic Act No. 7659, is AFFIRMED WITH THE MODIFICATION that the penalty imposed by the trial court is reduced to RECLUSION PERPETUA. Both appellants are likewise ordered to pay a fine of one million pesos (P1,000,000.00) each, and the costs. Further, the 9,858.60 grams of methylamphetamine hydrochloride or shabu, still in the possession of the PNP Crime Laboratory in Camp Crame in Quezon City, are FORFEITED in favor of the government. The Chief of said Laboratory is hereby directed: (a) to cause the transport thereof to the Dangerous Drug Board and the National Bureau of Investigation for proper disposition, and (b) to inform this Court of the action he has taken within five days from receipt hereof.

SO ORDERED.

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

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[1] 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.

Notwithstanding the provisions of Section 20 of this Act to the contrary, if the victim of the offense is a minor, or should a regulated drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed.

[2] 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

[3] Records, p. 224; TSN, January 8, 1997, pp. 2-19.

[4] TSN, February 4, 1997, p. 14.

[5] Id. at 15.

[6] Id. at 16-21.

[7] Id. at 27-30.

[8] TSN, February 4, 1997, pp. 32-43.

[9] Records, pp. 83-93.

[10] TSN, February 4, 1997, pp. 72-73.

[11] TSN, February 6, 1997, p. 31.

[12] TSN, February 10, 1997, p. 65.

[13] TSN, March 19, 1997, p. 12.

[14] Id. at 15.

[15] Id. at 14-15.

[16] Id. at 20.

[17] Id. at 50.

[18] Id. at 54-58.

[19] TSN, September 4, 1997, pp. 35-43.

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[20] Id. at 39-60.

[21] Id. at 5-8; TSN, September 25, 1997, p. 16.

[22] Id. at 23-24; Id. at 21.

[23] Records, pp. 206-207.

[24] Id. at 205.

[25] TSN, November 6, 1997, p. 40. ("Damn, we've been bumped.")

[26] TSN, September 25, 1997, p. 12

[27] Id. at 16.

[28] TSN, February 12, 1998, erroneously typed December in TSN, p. 9. (The owner of the vehicle is unclear.) The notes of Pagdilao's testimony reads:

> " WITNESS
>
> A According to the owner, Mrs. Violeta Lagrana, this is the car, the Toyota car with Plate No. TKD-862 with MI ROL MAC to a certain owner Mr. Rolando Makahiya, and he was showing this document to me when he was trying to get the release of this vehicle."

[29] Id. at 18-19.

[30] Records, pp. 67-73.

[31] Id. at 203.

[32] Rollo, Appellant's Brief, p. 21.

[33] Id. at 24.

[34] Ibid.

[35] TSN, March 19, 1997, p. 6.

[36] TSN, February 4, 1997, pp. 31-40.

[37] TSN, March 19, 1997, pp. 6-20.

[38] People vs. Macasling, Jr., G.R. No. 90342, 222 SCRA 630, 643-644 (1993).

[39] Rollo, p. 26.

[40] People v. Sanchez, G.R. Nos. 121039-45, 302 SCRA 21, 51-52 (1999).

[41] People v. Gonzales, G.R. No. 105689, 230 SCRA 291, 296 (1994).

[42] People v. Cheng Ho Chua, G.R. No. 127542, 305 SCRA 29, 43 (1999). Citing People v. Velasco, G.R. No. 110592, 252 SCRA 135, 143 (1996); People v. Manalo, G.R. No. 107623, 230 SCRA 309, 316 (1994); People v. Yap, G.R. No. 103517, 229 SCRA 787 (1994); People v. Macasa, G.R. No. 105283, 229 SCRA 422, 427 (1994); People v. Alaban, G.R. No. 97431, 214 SCRA 301, 305 (1992); et al.

[43] Rollo, pp. 81-82.

[44] Id. at 84.

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[45] Id. at 85-86.

[46] Ibid.

[47] Ibid.

[48] Supra, pp. 14-15.

[49] People v. Solon, G.R. No. 106639, 244 SCRA 554, 560 (1995). Citing People v.Marcelino, G.R. No. 85247, 224 SCRA 770, 773 (1993).

[50] Rollo, pp. 88-89.

[51] People v. Villanueva, G.R. No. 114266, 265 SCRA 318, 323 (1996).

[52] People v. Escandor, G.R. No. 95049, 265 SCRA 444, 450 (1996).

[53] Sec. 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[54] Records, p. 205.

[55] TSN, November 6, 1997, pp. 35-36.

[56] Records, pp. 206-207.

[57] People v. Lua, G.R. Nos. 114224-25, 256 SCRA 539, 546 (1996).

[58] People v. Ponsica, G.R. No. 108176, 230 SCRA 87, 95 (1994).

[59] People v. Doroja, G.R. No. 81002, 235 SCRA 238, 244-245 (1994).

[60] People v. Doria, G.R. No. 125299, 301 SCRA 668, 685-686 (1999); People v. Basilgo, G.R. No. 107327, 235 SCRA 191, 196-197 (1994).

[61] 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 is in any of the following quantities:

x x x

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

x x x

[62] ART. 63. Rules for the application of indivisible penalties.—

x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser

penalty shall be applied.

[63] People v. Che Chun Ting, G.R. Nos. 130568-69, 328 SCRA 592, 604 (2000).

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