PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROMAN LACAP Y CAILLES, ACCUSED-APPELLANT.

G.R. No. 139114. October 23, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is an appeal from the decision[1] of the Regional Trial Court, Branch 86, Quezon City, finding accused-appellant Roman Lacap y Cailles guilty of violation of Art. III, §15 of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, and sentencing him to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00.

The information against accused-appellant reads as follows:

> That on or about the 7th day of April 1997 in Quezon City, Philippines, the said accused, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there willfully and unlawfully sell or offer for sale 1,798.90 grams of white crystalline substance known as "SHABU" containing methamphetamine hydrochloride, which is a regulated drug.
>
> CONTRARY TO LAW.[2]

Upon arraignment, accused-appellant pleaded not guilty, whereupon trial ensued.

Thereafter, the prosecution presented evidence as follows:

Sometime during the first week of March 1997, the National Bureau of Investigation received a tip from an informant that a certain Eduardo "Ed" Contreras and his common-law wife Alice Esmenia were engaged in shabu trafficking at their residence in No. 21 Legal St., SSS Village, North Fairview, Quezon City.[3] After verifying the information, the NBI planned a buy-bust operation. The informant introduced to Contreras NBI Supervising Agent Jose Doloiras, whose assumed name was Ricky Baconawa, as a person who wanted to buy shabu in large quantity. Doloiras said he was a mere drug broker. Later, Doloiras and NBI Special Agent Carlos Borromeo III went back to the said address pretending to buy from Contreras and Esmenia one kilo of shabu. However, the purchase of shabu was not consummated despite several attempts because either the couple could not produce the agreed quantity of the drug or their supplier did not arrive.[4]

On April 4, 1997, Contreras introduced Doloiras to his half-sister, Mia Saludo, at the family residence of the latter at No. 14-KEW Garden St., St. Ignatius Village, Libis, Quezon City and there they negotiated for the sale of two kilos of shabu. The deal likewise did not fall through because Saludo's supplier failed to arrive.[5]

On April 7, 1997, Doloiras contacted Contreras to find out if the two kilos of shabu were already available. Contreras answered in the affirmative and told Doloiras to proceed to No. 14-KEW Garden St., St. Ignatius Village, Libis, Quezon City.[6] Accordingly, Doloiras and the NBI Dangerous Drugs Division organized a buy-bust team which proceeded to the said place. Doloiras would act as the poseur-buyer, while Borromeo III would act as his driver. He would give the pre-arranged signal to the other members of the team as soon as the

shabu was shown to him. They would use "boodle" money consisting of cut newspapers placed in between fake P500.00 bills in several bundles of P50,000.00 each, arranged in a portfolio so as to make it appear that the money amounted to P1,600,000.00.[7]

The buy-bust team arrived at the target area at around 4:00 p.m. Doloiras met Contreras, Esmenia, and Saludo, while the members of the team positioned themselves strategically. After a while, Contreras instructed Doloiras to proceed to No. 111 Scout Rallos St., Quezon City as the seller of shabu, a certain Rene, would be waiting for them there. Doloiras informed the other operatives of the transfer of venue and the latter in turn went ahead to the appointed place. Doloiras and Borromeo III boarded their car, while Contreras, Esmenia, and Saludo took a taxi to the said address.

They all arrived at the said place at around 5:00 p.m. The house was a big old bungalow with a steel gate and a high wall. Doloiras entered the premises with Contreras, Saludo, and Esmenia. Borromeo III, with the bogus money in his possession, waited in the car parked outside the gate. The other members of the buy-bust team, on the other hand, inconspicuously positioned themselves nearby.

After several hours of waiting, Contreras told Doloiras and Borromeo III that the seller of the shabu was not coming for another hour. Doloiras and Borromeo III told Contreras that they would leave for a while and return later. When they left, Borromeo III radioed the members of the team. They met at the Goodah Restaurant on West Avenue, Quezon City, where they again had a briefing on how the buy-bust operation would be conducted.[8]

After an hour or so, Doloiras returned to the house while the others went back to their respective positions. Contreras told Doloiras that the shabu supplier had finally arrived. Doloiras, Contreras, and Esmenia went inside the house. Doloiras and Contreras went inside a room, while Esmenia stayed behind. There Doloiras for the first time met accused-appellant. The two talked about the purchase of two kilos of shabu for P1,600,000.00. Doloiras told accused-appellant that the money was ready and it was in the possession of his driver. Accused-appellant wanted to see the money before giving the shabu, but Doloiras asked to be shown the drug first. They haggled about this matter for an hour and, as they could not agree, Doloiras came out of the room looking tense and annoyed.

Contreras followed him and tried to calm him down. He told Doloiras that he would convince accused-appellant to show him the shabu. Contreras assured accused-appellant that he had seen the money. Accused-appellant therefore showed the white crystalline substance contained in two plastic bags inside a brown carton box placed on top of a safety vault. Recognizing that it was indeed shabu, Doloiras told accused-appellant and Contreras that he would get his money.[9] Doloiras went out to Borromeo III and took the "boodle" money contained in a black attaché case from the latter. Doloiras told Borromeo III, "Okay na," i.e., he had already seen the shabu so that the buy-bust team should get ready to make the arrest. The signal was then given to the rest of the operatives.

Borromeo III drove the car towards the gate and asked the security guard to open it so that he could park it inside. The guard obliged. Then, taking advantage of the open gate, the NBI operatives, led by the back-up team of NBI Dangerous Drugs Division Chief Abdulgani Benito, Agents Migdonio Congzon, Jr., and Jose Justo Yap, and Special Investigators Carlos Borromeo III and Romeo Aradanas, Jr., entered the premises.[10]

Meanwhile, Doloiras handed the attaché case to accused-appellant. As accused-appellant was opening it, Doloiras announced the arrest.[11] Accused-appellant tried to lock the white crystalline substance inside the vault, but Doloiras prevented him from closing it.[12] Shortly afterwards, Aradanas, Jr., Yap, Congzon, Jr., and Borromeo III entered the room. After a while, Benito also entered. They found accused-appellant seated beside the vault with the attaché case. The vault was opened and Doloiras took out the box and handed it to Benito, who asked accused-appellant who his source of the drug was. Accused-appellant told him that the NBI could find the

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supplier in Pampanga. The NBI operatives also placed Contreras, Esmenia, and Saludo under arrest. Together with accused-appellant, they were taken to the NBI headquarters on Taft Avenue, Manila, where they were detained.

Shortly after, a Nissan Sentra, driven by accused-appellant's daughter, arrived at the house. The NBI agents inquired about the ownership of the car. Accused-appellant's daughter claimed that the car was hers. However, she failed to show documents of ownership, for which reason the NBI operatives took custody of the car until its rightful owner showed up.[13]

Doloiras took the two plastic bags containing the white crystalline substance, marked the same for identification, and affixed his signature thereon in the presence of Benito and Aradanas, Jr. Doloiras then turned the confiscated items over to Benito for safekeeping. Thereafter, the team proceeded to Pampanga, following accused-appellant's information, but they failed to find the supplier.[14]

On April 9, 1997, at around 9:30 a.m., Doloiras submitted the confiscated items to the NBI Forensic Chemistry Division for examination.[15] Forensic Chemist Aida Abear-Pascual took small samples from the specimen. The samples, weighing a total of about one gram, were subjected to chemical and chromatographic tests and were found to be positive for methamphetamine hydrochloride or shabu.[16]

The defense then presented its evidence. Accused-appellant, a former police officer with the rank of major, denied that there was any buy-bust operation conducted against him on April 7, 1997. He claimed that the NBI operatives raided the house at No. 111 Scout Rallos St., Quezon City without a search warrant. He denied having been involved in any illegal transaction, especially drug-pushing, and claimed that he was merely framed up by the operatives.

Accused-appellant claimed that on April 7, 1997, at around 8:00 p.m., he was in his house at No. 46 12th Avenue, Cubao, Quezon City. He left the house at about 8:30 p.m. and went to the Goldilocks Restaurant in Cubao to buy food for his 15-year old son, Roman Lacap III, who was then at the Kauffman residence at No. 111 Scout Rallos St., Quezon City. The Kauffmans were family friends. He first went to Project 6, Quezon City to have the signal lights of his car fixed and then proceeded to meet his son.

Upon arriving at the Kauffmans' house, accused-appellant said he noticed five persons, four females and one male, on the front porch. He recognized two of the women to be Rose Lou Kauffman and Mia Saludo. Accused-appellant went to look for his son to let him know that he had arrived, and then returned to the group on the porch. Rose Lou Kauffman introduced him to Ed Contreras, Alice Esmenia, and Ivonne, Mia's sister. After exchanging pleasantries, accused-appellant said he requested Rose Lou to follow him inside. Accused-appellant gave his son the food he bought for him and read the newspaper.

Accused-appellant said he then heard the doorbell ring and a commotion outside. He asked Rose Lou what was going on, but before she could get out of the room, armed men kicked the door open, followed by accused-appellant's daughter Ma. Chrysantine "Tin-Tin" Lacap and a male companion. The men ordered them, "Dapa, dapa, pulis ito!" ("On the floor, this is the police!") even as they identified themselves as NBI agents. Accused-appellant, his son, Rose Lou, Tin-Tin, and her companion all sat on the floor with their hands on the bed. Later on, accused-appellant's son was allowed to leave the room. The NBI agents informed them that there were drugs inside the house so they had to make a search. However, according to accused-appellant, Rose Lou objected to the search as the agents did not have a search warrant. But one of the men pointed a gun at her and said, "This is our search warrant" to which, according to accused-appellant, he said to the men, "Walang ganyanan," ("You should not do that") and then told his daughter, "What is this, martial law?"

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The men searched the house over the objections of the occupants. When they saw the vault, they asked accused-appellant and Rose Lou to open it. But accused-appellant said he did not know how to open the vault because Roger, a household help of the Kauffmans, was the one using it. When asked where Roger was, accused-appellant said he did not know. Some of the agents went out of the room and returned with a man. They asked accused-appellant if the man was Roger. Accused-appellant said that it was Ricky Kauffman, a son of the owner of the house. He told them to go easy on Ricky because he was sickly. The men then pushed Ricky aside and made him sit on a chair near the foot of the bed. One of the men told him, "Buksan mo na, parang bale wala, aalis na kami." ("Just open the vault and we'll leave as if nothing happened.") Accused-appellant said he shook the vault and surprisingly it opened. He was then pushed aside and one of the men took out something wrapped with a brown masking tape. Accused-appellant claimed he did not know what the contents of the package were as the same was not opened in his presence.

Accused-appellant was then placed under arrest, handcuffed, and taken out of the room. Also arrested were the four people on the porch. An agent even wanted to bring along Tin-Tin and Rose Lou, but accused-appellant begged him not to since they had nothing to do with the shabu. According to accused-appellant, as the NBI men did not have any vehicle, they asked for the keys of his daughter's car. His daughter Tin-Tin protested, but accused-appellant assured her that it would be all right so she gave him the car keys. Thereafter, accused-appellant and the other people arrested were taken to the NBI headquarters.[17]

Accused-appellant's daughter, Ma. Chrysantine Lacap, testified that on April 7, 1997, at around 8:00 p.m., she was also at their house in Cubao, Quezon City. Accused-appellant told her that he was going to check on her brother, Roman Lacap III, who was then staying at the residence of the Kauffmans. She told her father that she would follow him as she promised to bring her brother some clothes. Tin-Tin left their house at about 10:40 p.m., accompanied by her boyfriend, Salvador dela Peña, who drove her Nissan Sentra. When they reached the place, she rang the doorbell and asked the maid to let them in. However, as they were entering the compound, armed men barged inside the premises. The men, who turned out to be NBI agents, ordered them, "Taas ang kamay! Dapa! Dapa!" ("Raise your hands! To the floor!") Those on the porch did so. Some of the men went to the side of the car while the others proceeded to the front door. As the door was locked, one of the NBI agents kicked it but it did not open. The man broke the window pane with his gun and reached for the knob. The men then entered the house. Tin-Tin and her companion followed them.

The men went all over the house, kicking doors open and shooting up the place. The agents entered the room where her father, her brother, and Rose Lou Kauffman were. The men also ordered them to lie on the floor face down. They identified themselves as NBI agents and told them that they were looking for drugs. Accused-appellant and Rose Lou objected when they learned that the agents did not have a search warrant, but one of the men pointed a gun at her and told her that the gun was his search warrant. Tin-Tin shouted, "Ano ba ito, martial law?" ("What is this, martial law?") The NBI agents ignored her protests and searched the house.

When they saw the vault, they ordered accused-appellant and Rose Lou to open it. Accused-appellant told them that he could not do so because it was Roger who knew the vault's combination. The agents, therefore, went out of the room to look for Roger. They returned with a man, who turned out to be Ricky Kauffman, Rose Lou's brother. Accused-appellant asked the agents not to be harsh on Ricky because he was sick. One agent then pointed a gun at accused-appellant's forehead and said, "Bubuksan mo ba ito o dadalhin namin kayo lahat?" (`Are you going to open the vault or will we just arrest all of you?") The man added, "Sige na, buksan mo na ito at aalis na kami." ("Go on, open it now and we'll leave.") According to Tin-Tin, at the sight of her father at gunpoint, she cried, embraced him, and said, "Sige, patayin na ninyo kami!" ("Just kill us all!")

Accused-appellant approached the vault and turned its knob counter-clockwise then clockwise. The vault opened

and Tin-Tin saw a box wrapped in a brown envelope. An agent asked accused-appellant what was in the box. When accused-appellant replied he did not know, the NBI agents handcuffed him and dragged him out of the room. Tin-Tin tried to stop them, but to no avail.

Outside the house, Tin-Tin saw four persons prostrate on the ground with an armalite pointed at them. The NBI agents were going to take Tin-Tin with them, but accused-appellant begged them not to. They asked her for the keys to her car and, when she refused, one of the agents grabbed the keys from her hand. The agents warned her not to tell anybody about the incident, otherwise they would kill her father. Accused-appellant and the other four persons at the porch were loaded into her car and taken to the NBI headquarters. According to Tin-Tin, the NBI never returned her car and one of the agents was even seen using it.[18]

Mia Saludo also testified for the defense. According to her, on April 7, 1997, at around 8:00 p.m., she was at her mother's house at 4 St. Ignatius Village, Libis, Quezon City for a visit. With her were Ed Contreras and Alice Esmenia and her sisters, Ivonne, Sandra, Annette, and Sonia. At that time, Mia was trying to get in touch with Rose Lou Kauffman in order to get authority to sell the Kauffmans' residential house and lot at No. 111 Scout Rallos St., Quezon City. Rose Lou told Mia to come over at about 9:30 that night to get said authority from accused-appellant, Rose Lou's attorney-in-fact. Contreras then asked Mia to introduce him to Rose Lou and accused-appellant as he wanted to sell them some jewelry. Mia agreed so she and her sister, Ivonne, Contreras, and Esmenia left the house at 8:30 p.m. and took a taxi to Scout Rallos St., Quezon City.

Rose Lou met them and talked to them on the porch. At around 10:30 p.m., accused-appellant arrived and, after greeting them, asked Rose Lou to follow him inside the house.

While they were outside waiting, accused-appellant's daughter Tin-Tin arrived in a car. Suddenly, several men who identified themselves as NBI agents barged into the house, shouting, "Dapa, dapa kayo!" ("On the floor!") Mia and her companions did as ordered. Thereafter, she heard glass shattering. After about 15 minutes, Mia said she saw the agents bringing accused-appellant, who was handcuffed, out of the house. The agents put accused-appellant in Tin-Tin's car, even as they ordered Mia, Ivonne, Contreras, and Esmenia to get inside a van. Mia and her companions were taken to the NBI headquarters where they were made to sign some papers. They were detained and later taken to the Quezon City Hall, where they were investigated, until they were released. Mia testified that accused-appellant and Contreras met only that night.[19]

The defense presented as its last witness Rolly Delgado, a worker at the Orient Sun owned by Rose Lou Kauffman and accused-appellant. Delgado testified that on April 7, 1997, at around 10:00 p.m., he was sleeping inside a warehouse at No. 111 Scout Rallos St., Quezon City when he was awakened by two armed men who asked him if he was Roger. Delgado told them that his name was Rolly. The men searched his person and asked him where Roger was. Delgado replied that Roger was around, but he did not know exactly where he was. The men then went inside the house through the back door. Another man came out of the room and asked the two men if they had seen Roger. Then someone asked, "Binubuksan na ba?" ("Is it being opened?"). Delgado, who said he did not know what was going on, heard someone answer in the affirmative. Then Delgado was told to leave, but Delgado said he hid nearby and tried to see what was going on.

He saw accused-appellant in handcuffs being led out of the room by armed men, followed by Rose Lou, Ricky Kauffman, and a small girl, whom he recognized to be accused-appellant's daughter. Delgado did not know where they went.[20]

On June 7, 1999, the trial court rendered its decision. It found accused-appellant Roman Lacap guilty of violation of §15 of Republic Act No. 6425, as amended by Republic Act No. 7659, and sentenced him to suffer the penalty of reclusion perpetua and to pay a fine of P500,000.00.

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Hence this appeal. Accused-appellant makes the following assignment of errors:

> - THE HONORABLE COURT COMMITTED A GRAVE ERROR IN CONSIDERING AND ADMITTING THE TESTIMONIES OF PROSECUTION WITNESSES ON THE GROUND THAT THEY WERE NOT FORMALLY OFFERED.
>
> - THE COURT A QUO SERIOUSLY ERRED IN FINDING THAT THERE WAS A DRUG DEAL BETWEEN DOLOIRAS AND LACAP. SUCH CONCLUSION IS NOT SUPPORTED [BY] CREDIBLE EVIDENCE ON RECORD. THE ALLEGED SHABU THAT WAS CONFISCATED BEING FRUIT OF A POISONOUS TREE IS INADMISSIBLE IN EVIDENCE.
>
> - THE TRIAL COURT GRIEVOUSLY ERRED WITH GROSS MISAPPREHENSION OF FACTS IN ITS "RECONSTRUCTED" FINDINGS THAT:
>
> - THE MERE EXISTENCE OF SHABU INSIDE 111 SCOUT RALLOS, QUEZON CITY IMPLIED THAT SOMEONE INSIDE THE RESIDENCE MUST HAVE INFORMED THE NBI ABOUT THE EXISTENCE OF DRUGS IN THAT PLACE;
>
> - THERE WAS ADMISSION BY ONE OF THE DEFENSE WITNESSES THAT CONTRERAS, ESMENIA AND SALUDO, AND ADMITTED BY ONE OF THE DEFENSE WITNESSES THAT THEY BOARDED A TAXI, IMPLIED THAT CONTRERAS ALLOWED THE AGENT TO ENTER THE KAUFFMAN RESIDENCE (sic);
>
> - THE SHABU WAS FIRST SHOWN BY THE ACCUSED-APPELLANT AND WAS RETURNED TO THE SAFETY VAULT AND CLOSED BY THE APPELLANT BEFORE THE COMMANDO ATTACK WAS EMPLOYED BY THE NBI AGENTS TO PREVENT THE ACCUSED FROM ESCAPING;
>
> THESE FINDINGS WERE BASED MERELY ON PURE CONJECTURES AND SURMISES CONTRARY TO WHAT IS CONTAINED IN THE RECORDS.
>
> - THE COURT A QUO SERIOUSLY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE MATERIAL INCONSISTENCIES AND LIES IN [THE PROSECUTION WITNESSES'] TESTIMONY, LACKING REQUISITE CREDULITY, SUFFICIENT TO CONVICT THE ACCUSED-APPELLANT.[21]

First. Accused-appellant contends that the trial court erred in admitting the testimonies of the prosecution witnesses despite the fact that they were not formally offered in accordance with Rule 132, §34 of the Rules of Court, which provides that: "The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified." He further claims that the purpose for which the said testimonies were offered was not specified.

The contention has no merit. The records show that the prosecution presented five witnesses, namely, NBI Forensic Chemist Aida Abear-Pascual, NBI Special Investigator Carlos Borromeo III, NBI Special Investigator Romeo Aradanas, Jr., NBI Supervising Agent Jose Doloiras, and NBI Dangerous Drugs Division Chief Abdulgani Benito. Except for Abear-Pascual, whose testimony was offered with respect to the results of the examination of the white crystalline substance confiscated from accused-appellant,[22] the testimonies of the other prosecution witnesses were offered to show the circumstances surrounding the buy-bust operation conducted on April 7, 1997 against accused-appellant and how he was arrested as a result thereof for selling shabu.[23] The offer of testimonial evidence was properly made when the said witnesses were called to testify in accordance with Rule 132, §35 of the Rules of Court. Moreover, even assuming that the offer of evidence was defective, as accused-appellant did not object to the testimonies of the witnesses but, on the contrary, even cross-examined them, he cannot now object to their admissibility for the first time on appeal.[24]

Second. Accused-appellant asserts that the trial court erred in finding that there was a buy-bust operation

conducted against him. Accused-appellant contends that the testimonies of the prosecution witnesses should not have been given credence by the trial court.

This contention is likewise without merit. Time and again, this Court has ruled that the evaluation of the credibility of witnesses is within the province of the trial court which had the opportunity to observe the witnesses and their demeanor on the stand. Unless the trial court overlooked facts of substance affecting the outcome of the case, utmost respect should be accorded to its findings.[25]

In this case, we find no cogent reason to overturn the findings of the trial court. NBI Agent Jose Doloiras positively identified accused-appellant as the seller of approximately two kilos of shabu for the amount of P1,600,000.00. The fact that a buy-bust operation was conducted against accused-appellant was corroborated by the other members of the buy-bust team. Their testimonies are positive, credible, and entirely in accord with human experience. It is difficult for a rational mind not to give credence to them. The seeming inconsistency pointed out by accused-appellant as to where the members of the buy-bust team had seen the shabu, i.e., whether on top of or inside the vault, is explained by the fact that Doloiras first saw it on top of the vault but accused-appellant tried to put it back in the vault when the other operatives entered the room. Even assuming this to be an inconsistency, it is only a minor one which does not touch upon the central fact of the crime and, therefore, does not impair the witnesses' credibility.[26] Moreover, the prosecution witnesses, all of whom are public officers, are presumed to have acted regularly and in the performance of official functions in the absence of proof that they were motivated by ill will.[27]

We have recognized a buy-bust operation as a legitimate mode of apprehending drug pushers. There is no particular method of conducting such operation. The selection of appropriate and effective means of entrapping drug traffickers is left to the discretion of the police authorities in each case,[28] the only limitation being that the constitutional rights of suspects be respected.[29] It is absurd for accused-appellant to complain that there was no prior surveillance conducted on him and that it was only on the night of April 7, 1997 that the NBI agents first met him considering that his broker, Contreras, was the one who actually led the NBI operatives to him.

Accused-appellant also complains that the NBI agents did not have any search warrant with them at the time they arrested him. This is one of the exceptions to the rule that a search may be conducted only by virtue of a warrant. A buy-bust operation involves an apprehension in flagrante delicto and, therefore, no warrant is needed to arrest the suspect.[30] It would be ridiculous for the buy-bust team to first obtain a search warrant when the crime is committed right before their eyes.

Indeed, there is not even a search to speak of in this case. For the fact is that it was accused-appellant himself who showed to NBI Agent Doloiras the two plastic bags containing shabu and then placed them on top of the vault. Contrary to the claim of the defense that the NBI agents searched the entire house and only found the prohibited drug after ransacking the place, they went directly to the room where accused-appellant was.[31]

Accused-appellant cites NBI Agent Abdulgani Benito's account that the room was in a "topsy-turvy" condition to show that the NBI agents ransacked the place. This is not accurate. What Benito said was that he could not say where in the room the transaction between accused-appellant and Doloiras took place because the room was unkempt and his attention was focused on the vault and the shabu.[32] Moreover, even if the room was in disarray, this fact does not necessarily mean it was made so as a result of the search made by the NBI agents. Indeed, Benito could not have meant to say this as he was part of the NBI team.

Neither does the fact that the NBI agents made several trips and came back empty-handed show that their mission was a "hit-and-miss" operation. They tried to follow the information given to them as to the source of the shabu, but they were misled.

On the other hand, accused-appellant's denial that he had sold shabu to Doloiras cannot stand. Between the positive identification of accused-appellant by Doloiras who acted as a poseur-buyer and accused-appellant's denial, there is no question that greater weight must be given to the positive testimony of Doloiras.[33]

Accused-appellant claims he was merely framed up. This claim is nothing new. It is a common and standard line of defense in most prosecutions for violations of the Dangerous Drugs Act.[34] It is generally rejected for it can easily be concocted but is difficult to prove.

Indeed, the testimonies of the defense witnesses have many loose ends and are not as plausible as accused-appellant would want to make them appear. For instance, it is hard to believe that accused-appellant, a former military officer,[35] trained in narcotics operations, anti-terrorism, and military tactics,[36] could so easily be intimidated by NBI agents into opening the safety vault which he claims did not belong to him. Even more incredible is his claim that by merely shaking the vault it opened. How he could have shaken a heavy steel vault is itself incredible.

Accused-appellant's testimony that the vault was being used by Roger is likewise incredible. Roger was a mere househelper. It is improbable that he would be entrusted with the use of the safety vault and that only he would know its combination. The safety vault was inside the room of the owner and master of the house. Is it probable that Roger was allowed access to that room?

Accused-appellant claims that it would be improbable for him, considering his military background and training, to transact with a stranger for the sale of shabu. This claim is non sequitur. On the contrary, he could have used his training and exposure in narcotics operation for his personal benefit. Indeed, for some, the lure of easy profits can easily outweigh the risk of arrest and prosecution.[37] Furthermore, as the trial court correctly pointed out, the fact that accused-appellant went on absence without leave (AWOL) on account of his alleged dissatisfaction with the promotion system in the Philippine National Police, instead of resigning or retiring from military service with an honorable dismissal, casts doubt on his character as a police officer.[38]

Why should accused-appellant be arrested when he was merely visiting the owner, Rose Lou Kauffman, who, assuming she really existed, remained at large considering that the shabu was found inside her room? It is hard to believe that the NBI agents would readily let her go just because accused-appellant begged them to release her.

In addition, there are discrepancies and inconsistencies between accused-appellant's testimony and that of his daughter's, a major corroborative witness, to wit: (1) accused-appellant testified that the vault opened after he had shaken it, while Tin-Tin Lacap testified that her father turned the vault's knob to open it; (2) accused-appellant testified that it was he who commented to his daughter, "What is this, martial law?," when a gun was pointed at Rose Lou Kauffman, while Tin-Tin testified that it was she who made such remark; and (3) accused-appellant testified that after convincing his daughter that it was all right to let the agents lend them her car, she gave them her car keys, while Tin-Tin testified that she did not give the keys but that they were grabbed from her because she was protesting the seizure of her car. We have held that patent inconsistencies in the testimonies of accused-appellant and that of his supposed corroborative witness undermine accused-appellant's defense.[39]

For the foregoing reasons, we cannot give credence to the testimonies of the defense witnesses. For testimonial evidence to be believed, it must not only proceed from the mouth of a credible witness but must also be credible in itself such as the common experience and observation of mankind can approve of as probable under the circumstances.[40]

Third. The elements necessary for the prosecution for illegal sale of shabu, with which accused-appellant was charged, are: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of

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the thing sold and the payment therefor.[41]

Accused-appellant argues that the elements of the crime had not been established. He contends that there was no delivery of the drug to Doloiras, and, therefore, he should be acquitted of the charge. The records, however, belie his claim. Although accused-appellant did not actually hand the contraband to Doloiras, he placed it on top of the vault where Doloiras could easily have gotten it after paying accused-appellant. There was thus a constructive delivery of the drug. The fact that accused-appellant tried to put the shabu back inside the vault is of no moment as the crime had by then been already consummated. There is no rule which requires that in buy-bust operations there must be a simultaneous exchange of the money and the drug between the poseur-buyer and the pusher.[42]

Nor was it important that the "boodle" money was not presented in court. What is material to the prosecution of the illegal sale of dangerous drugs is proof that the transaction actually took place, coupled with the presentation in court of the corpus delicti.[43] This was sufficiently proven by the prosecution in this case. Hence, accused-appellant's conviction should be upheld.

As amended by R.A. No. 7659, Art. IV, §20 of the Dangerous Drugs Act provides in part that the penalty in Art. III, §15 of the same Act shall be applied if the dangerous drugs involved are 200 grams or more of shabu. The penalty for delivery or distribution of shabu without proper authority is reclusion perpetua to death and a fine ranging from P500,000.00 to P10,000,000.00. Since there were neither mitigating nor aggravating circumstances attending accused-appellant's sale of 1,798.90 grams of shabu, the trial court properly imposed on him the penalty of reclusion perpetua and ordered him to pay a fine of P500,000.00.

WHEREFORE, the decision of the Regional Trial Court, Branch 86, Quezon City is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Per Judge Teodoro A. Bay.

[2] Rollo, p. 4.

[3] Exh. F.

[4] Id.; TSN (Jose Doloiras), p. 4, Sept. 1, 1997.

[5] Exh. F.

[6] TSN (Carlos Borromeo III), p. 5, June 27, 1997; TSN (Jose Doloiras), p. 5, Sept. 1, 1997.

[7] TSN (Carlos Borromeo III), pp. 4-7, 19, June 27, 1997; TSN (Romeo Aradanas, Jr.), pp. 2, 6, Aug. 4, 1997; TSN (Jose Doloiras), pp. 5, 28, Sept. 1, 1997; TSN (Abdulgani Benito), pp. 3-6, Sept. 3, 1997.

[8] Id., pp. 5-7, 14, 18; id., pp. 2-3; id., pp. 5-7, 17; id., pp. 3-4-A.

[9] TSN (Jose Doloiras), pp. 7-9, 20-21, Sept. 1, 1997.

[10] TSN (Carlos Borromeo III), pp. 8-9, June 27, 1997; TSN (Romeo Aradanas, Jr.), p. 3, Aug. 4, 1997; TSN (Jose Doloiras), p. 9, Sept. 1, 1997; TSN (Abdulgani Benito), p. 6, Sept. 3, 1997.

[11] TSN (Jose Doloiras), p. 9, Sept. 1, 1997.

[12] TSN (Abdulgani Benito), p. 8, Sept. 3, 1997.

[13] TSN (Carlos Borromeo III), pp. 9-10, 23, June 27, 1997; TSN (Romeo Aradanas, Jr.), pp. 3-4, 6-7, Aug. 4, 1997; TSN (Jose Doloiras), pp. 9, 23-24, Sept. 1, 1997; TSN (Abdulgani Benito), pp. 7-8, 15-18, Sept. 3, 1997.

[14] TSN (Romeo Aradanas, Jr.), p. 4, Aug. 4, 1997; TSN (Jose Doloiras), pp. 24-25, Sept. 1, 1997; TSN (Abdulgani Benito), pp. 9-10, 15-19, 22, Sept. 3, 1997.

[15] Id., p. 8; id., pp. 25-27; id., p. 20.

[16] TSN (Aida Abear-Pascual), pp. 8-21, May 22, 1997; Exhs. B and C.

[17] TSN (Roman Lacap), pp. 9-18, Aug. 26, 1998; TSN, pp. 2-5, Sept. 16, 1998; TSN, pp. 9-14, Nov. 4, 1998.

[18] TSN (Ma. Chrysantine Lacap), pp. 2-7, June 5, 1998; TSN, pp. 2-11, June 8, 1998.

[19] TSN (Mia Saludo), pp. 2-14, July 21, 1998.

[20] TSN (Rolly Delgado), pp. 2-5, Feb. 23, 1999.

[21] Rollo, pp. 48-49.

[22] TSN, pp. 2-3, May 22, 1997.

[23] TSN (Carlos Borromeo III), pp. 2-3, June 27, 1997; TSN (Romeo Aradanas, Jr.), p. 21, Aug. 4, 1997; TSN (Jose Doloiras), p. 2, Sept. 1, 1997; TSN (Abdulgani Benito), p. 2, Sept. 3, 1997.

[24] RULES ON EVIDENCE, RULE 132, §36; People v. Ramon Chua Uy, 327 SCRA 335 (2000).

[25] People v. Elamparo, 329 SCRA 404 (2000).

[26] People v. Uy, G.R. No. 129019, Aug. 16, 2000.

[27] People v. Barita, 325 SCRA 22 (2000).

[28] People v. Zheng Bai Hui and Nelson Hong Ty, G.R. No. 127580, Aug. 22, 2000.

[29] People v. Zheng Bai Hui and Nelson Hong Ty, G.R. No. 127580, Aug. 22, 2000; People v. Uy, G.R. No. 129019, Aug. 16, 2000;.

[30] People v. Doria, 301 SCRA 668 (1999).

[31] TSN (Romeo Aradanas, Jr.), p. 6, Aug. 4, 1997.

[32] TSN (Abdulgani Benito), p. 8, Sept. 3, 1997.

[33] People v. Uy, G.R. No. 129019, Aug. 16, 2000.

[34] People v. Barita, 325 SCRA 22 (2000).

[35] Exhs. 1, 1-A to 1-G.

[36] TSN, pp. 2-8, Aug. 26, 1998; TSN, p. 10, Nov. 4, 1998.

[37] People v. Zheng Bai Hui and Nelson Hong Ty, G.R. No. 127580, Aug. 22, 2000.

[38] Decision, pp. 10-11; Rollo, pp. 28-29.

[39] People v. Geral, 333 SCRA 453 (2000).

[40] People v. Leonardo, 332 SCRA 717 (2000).

[41] People v. Zheng Bai Hui and Nelson Hong Ty, G.R. No. 127580, Aug. 22, 2000.

[42] People v. Doria, 301 SCRA 668 (1999).

[43] People v. Chen Tiz Chang, 325 SCRA 776 (2000).

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