

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. PHOEBE ASTUDILLO AND KU SHO PING, ACCUSED-APPELLANTS.

G.R. No. 140088. November 13, 2002

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-140088/>

MENDOZA, J.:

This is an appeal from the decision,[1] dated September 17, 1999, of the Regional Trial Court, Branch 18, Manila, finding accused-appellants Phoebe Astudillo and Ku Sho Ping guilty of violation of Art. III, §15, in relation to Art. IV, §21, of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, with the aggravating circumstance that the offense had been committed by an organized or syndicated crime group, and sentencing each of them to suffer the penalty of death and to pay a fine of P30,000.00, plus the costs.

Accused-appellants were charged with violation of R.A. No. 6425, the information alleging—

That on or about the 20th of May 1998, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one another, with deliberate intent did then and there, willfully, unlawfully and feloniously sell, dispense, deliver, transport or distribute 2,978.3 grams of Meth[yl]amp[h]etamine Hydrochloride otherwise known as “shabu”, a regulated drug, without authority of law.

CONTRARY TO LAW.[2]

Upon being arraigned on August 13, 1998, accused-appellants pleaded not guilty to the charge against them,[3] whereupon they were tried.

The prosecution presented three witnesses, namely, P/Insp. Aileen U. Bernido, PNP Crime Laboratory Forensic Chemist, P/Insp. Jean S. Fajardo and PO1 Jose Pedroza, Jr.[4] Their testimonies are to the following effect:

In the morning of May 15, 1998, P/Insp. Jean Fajardo of the PNP Narcotics Group, Narcotics District Office, Fort Bonifacio, Makati City, received a report from an agent that a certain “Babes” was looking for a buyer of shabu. Fajardo thus reported the matter to her superior, P/Chief Insp. Pepito Domantay,[5] and was instructed to verify the report. Accordingly, Fajardo asked the informant to arrange a meeting between her (Fajardo) and “Babes.”[6]

At about 11:30 o’clock in the morning of May 17, 1998, Fajardo and the confidential agent met “Babes,” who turned out to be accused-appellant Phoebe Astudillo. After accused-appellant Astudillo had assured her of the first class quality of the shabu, Fajardo agreed to buy three kilos of shabu for P2.1 million. For this purpose, they decided to meet on May 20, 1998, between 5 and 6 o’clock in the afternoon, at the McDonald’s Restaurant on Divisoria along C.M. Recto Avenue in order to consummate the sale.[7]

Fajardo reported to Domantay and a buy-bust operation was planned.[8] They then organized a buy-bust team composed of seven police officers: P/Insp. Jean Fajardo (team leader), P/Insp. Efren Valmores,[9] SPO2 Reynaldo Palma, PO2 Elenito Apduhan, PO1 Jose Pedroza, PO1 Peter Sistemio, PO1 Rodrigo Bahug and the confidential agent.[10]

On May 20, 1998, Fajardo and the confidential agent stayed in their office until the jump-off time (around 2:05 o'clock in the afternoon), when she and her team went to the Western Police District (WPD) to coordinate with the other police officers. They proceeded to the McDonald's Restaurant in Divisoria, arriving there at around 5:40 o'clock in the afternoon.[11]

Fajardo and the informant proceeded to the second floor of McDonald's. PO1 Pedroza occupied a table facing them, about four meters away, while the rest of the team positioned themselves outside the restaurant. After a few minutes, accused-appellants Astudillo and Ku Sho Ping arrived. Astudillo asked Fajardo if she brought the money with her, to which the latter answered she had and pointed to a maroon attaché case beside her. The attaché case contained 700 pieces of genuine P1,000.00 bills and newspaper cut boodle money arranged in three layers of seven bundles each. The bottom and second layers contained boodle money with one genuine P1,000.00 bill on top of every bundle, while the first layer contained 99 pieces of P1,000.00 bills divided into seven bundles. Ku Sho Ping requested to see the money, saying in her broken Tagalog, "Ako tingin pera, kung ikaw talaga dala." ("I'll look at the money, to see if you've really brought it with you.") Fajardo opened the attaché case for a short while and then closed it again. She did not let them touch the money as earlier agreed upon. Accused-appellants Ku Sho Ping and Astudillo then talked to each other in whispers, after which Ku Sho Ping went downstairs and told Fajardo to follow. After a few minutes, Fajardo, who was holding the attaché case, and Astudillo went downstairs, while the agent was left behind. They waited in front of the restaurant. Shortly after, Ku Sho Ping came back with a gold plastic "ITTI" bag. She opened the bag and Fajardo put her left hand inside the bag and felt its contents. Assured that the bag contained shabu, Fajardo turned over the attaché case containing the money to Astudillo and took the plastic bag. She then gave the signal to her team members by raising her sunglasses on her forehead. When she saw her back-up team approaching, Fajardo identified herself as a narcotics agent to accused-appellants Ku Sho Ping and Astudillo. She took hold of accused-appellants, while holding a gun and the bag containing the shabu. Astudillo was able to extricate herself from Fajardo's hold and pass the attaché case to a Chinese-looking male, who escaped with the money amidst the crowd in the market place. As Fajardo asked Sistemio to go after the man, she and Pedroza frisked Astudillo. Accused-appellants Astudillo and Kuo Sho Ping were then put inside a waiting car and taken to Fort Bonifacio, where they were turned over to investigator PO2 Arojado. There, Fajardo marked the plastic bag "JSF" (for Jean S. Fajardo) and placed it in a vault.[12] Domantay ordered Valmores to return to Divisoria to try to recover the money, but the latter failed to do so. Fajardo, Pedroza and Sistemio made an Affidavit of Arrest (Exh. I), on the basis of which Domantay made a Request for Laboratory Examination (Exh. J) and a Request for Medical and Physical Examinations (Exh. K) of accused-appellants to the PNP Crime Laboratory.

The shabu seized from accused-appellants was found by the Forensic Chemist, P/Insp. Aileen U. Bernido, to be positive for methylamphetamine hydrochloride or shabu (Exhs. F and G). Bernido testified that the bag (Exh. E) contained three plastic packets (Exhs. B, C and D), weighing 994.1, 994.7 and 989.5 grams each, or a total of 2,978.3 grams. The gross weights, or the weights of the substance with the transparent plastic bag, were 1,006.6, 1,006.6 and 1,001.9 grams each, or a total of 3,015.10 grams. She found the substance to contain adulterants, which caused the specimens, supposed to be white crystalline substance, to deteriorate and become powdery. She weighed the pure shabu and found them to weigh 663.26, 577.52 and 666.43 grams each packet, or a total of 1,907.21 grams.[13]

On the other hand, five witnesses were presented for the defense, namely, accused-appellants Phoebe Astudillo and Ku Sho Ping, P/Insp. Efren C. Valmores, Fernando David and Mercedes dela Peña.

Accused-appellant Ku Sho Ping testified in Chinese since she was not fluent in Tagalog. According to her, she was in Divisoria buying vegetables in the afternoon of May 20, 1998 when two police officers held both her hands

and put her inside a waiting vehicle. She was taken to an office where she was detained for a charge which she did not understand. Because she was in shock, she was sent to the National Center for Mental Health for psychiatric evaluation. She testified that she came to know accused-appellant Phoebe Astudillo only after they had both been charged in this case. She further testified that she did not know what shabu looked like and denied that she went to the McDonald's Restaurant on May 20, 1998, saw Phoebe Astudillo there, and delivered three kilos of shabu.[14]

The testimony of accused-appellant Ku Sho Ping that she was in Divisoria on May 20, 1998 buying vegetables when she was arrested by the police was corroborated by Mercedes de la Peña, a vegetable vendor from whom Ku Sho Ping allegedly bought the vegetables.[15]

On the other hand, accused-appellant Phoebe Astudillo testified that she went to Max's Restaurant with her husband on May 18, 1998 to meet a certain "Larry." They arrived at the restaurant at around 1:30 o'clock in the afternoon. Larry later arrived with a man named Mang Vic or Mang Boy, whom Astudillo described as tall, dark, wearing eyeglasses and about 65 years old. Astudillo said she was angered because she was asked by the man if she could produce three kilos of shabu, when, as far as she was concerned, the purpose of the meeting was about Larry's referral of a client, named "Sales," concerning a case of estafa and illegal recruitment, not about shabu. Astudillo said she refused to have anything to do with drugs because she was afraid to be put in jail again.[16] Upon insistence of the men, however, she was forced to give the telephone number of an Allan Yao, her cellmate in the Quezon City Jail. Two days after the meeting, Astudillo said, she received a call from Larry confirming that "Sales" was willing to pay P50,000.00 as acceptance fee for the legal services of her husband. A meeting at the Texas Restaurant in Divisoria at 3 o'clock in the afternoon of May 20, 1998 was therefore set. Astudillo went to the restaurant at the agreed time and waited until 4:20 o'clock, but she decided to leave when Larry did not arrive. She bought some clothes, pants and shoes in Divisoria instead, and proceeded to C. M. Recto Ave. to hail a taxicab. While waiting, she saw Mang Vic/Boy standing beside a parked car so she decided to approach him and ask him about Larry. When she reached him, however, she suddenly felt a hand grab her by the neck and heard someone say "NARCOM ito, huwag kang kikilos." (This is NARCOM, don't move.) When she was being put inside a car, a group of people in the vicinity tried to help her, but Fajardo brandished her gun and said "Pulis ito, huli namin siya." (This is the police. We caught her.) Astudillo was taken to the South Metro District Office (SMDO) in Fort Bonifacio. There, she was told to remove her jewelry and other valuables for safekeeping, but when she later asked for her valuables, the same were returned minus her crisp bills amounting to P19,700.00. Because of the loss, she filed a case against Fajardo and Palma for theft. She denied that she knew accused-appellant Ku Sho Ping and said she came to know her only after she had been arrested and detained at Fort Bonifacio. She likewise denied that she delivered shabu, that she ever got hold of a maroon attaché case or that she had been to McDonald's on May 20, 1998.[17]

The testimony of Astudillo that she was placed inside a vehicle and that the people in the vicinity tried to help her but were stopped when Fajardo brandished her gun was corroborated by Fernando David, a pedicab driver.[18]

P/Insp. Efren C. Valmores admitted that he was part of the team, led by Fajardo, which was formed so as to conduct a buy-bust operation on May 20, 1998. According to him, between 5 and 6 o'clock in the afternoon of May 20, 1998, he was with PO1 Peter Sistemio on the second floor of the McDonald's Restaurant in Divisoria in connection with the buy-bust operation. They had been instructed to wait for Fajardo and a certain Mang Boy. Valmores said that, when the two arrived, they talked about the operation. He was the designated arresting officer, while Mang Boy was going to be the poseur-buyer. Valmores described Mang Boy to be about 60 years old, about 5 feet and 5 inches tall, dark, with thinning hair and wearing eyeglasses. They also agreed upon the pre-arranged signal of either Fajardo or Mang Boy raising eyeglasses.

While at McDonald's, a Chinese woman, whom Valmores identified as accused-appellant Ku Sho Ping, arrived

and gave Fajardo an envelope. After reading the letter, Fajardo tore it, obviously angry. Ku Sho Ping left. Then, Valmores said, Fajardo and Mang Boy also left. He claimed he and Sistemio tried to follow them, but they were told by Fajardo to stay in front of the McDonald's Restaurant. Fajardo and Mang Boy never came back. Valmores said he saw them again near the railway and was told by Fajardo that a Chinese woman had escaped. They tried to go after the woman but failed to catch her, so they went back to their service vehicle which was parked on the other side of the street fronting McDonald's. It was there that he saw SPO2 Reynaldo Palma, also a member of the buy-bust operation team, grab Phoebe Astudillo by the neck. That was the first time he saw accused-appellant Astudillo.

Valmores said the buy-bust operation on May 20, 1998 was not successful. He denied that he was in charge as a perimeter guard, that he saw a person running with a brief case and that he was ordered to return to Divisoria to retrieve the money.[19]

The trial court found the testimony of Fajardo straightforward and convincing, and rendered judgment for the prosecution. The dispositive portion of its decision reads:[20]

WHEREFORE, this Court finds the accused, Phoebe Astudillo and Ku Sho Ping, guilty beyond reasonable doubt of the crime of Violation of Section 15, Article III in relation to Section 21 of Article IV of R.A. 6425 as amended by R.A. 7659, involving 2,978.3 grams of shabu, with the aggravating circumstance of the offense having been committed by an organized/syndicated crime group, and sentences them to suffer the penalty of death by lethal injection and to pay a fine of P30,000.00 each, plus the costs.

The 2,978.3 grams of shabu is forfeited in favor of the government and the PNP Crime Laboratory, Camp Crame, Quezon City, thru Forensic Chemist Aileen M. Bernido, to whom the shabu in question had been turned over for safekeeping, is ordered to turn over the same to the Dangerous Drugs Board, for proper disposition, and to submit to this Court proof of compliance herewith within five days from notice hereof.

SO ORDERED.[21]

Hence, this appeal. Accused-appellant Ku Sho Ping contends that—

I. THE RESPECTIVE TESTIMONIES OF THE TWO (2) PROSECUTION EYEWITNESS[ES] ARE CONTRADICTORY, INCONSISTENT, CONTRARY TO HUMAN EXPERIENCE, WAVERING AND UNDESERVING OF BELIEF.[22]

II. A CAREFUL, PRUDENT AND CIRCUMSPECT REVIEW OF THE RECORDS WOULD READILY REVEAL THAT CERTAIN VITAL EVIDENCE WERE CONVENIENTLY OMITTED, IF NOT DISREGARDED, BY THE TRIAL COURT WHICH IF PROPERLY APPRECIATED WOULD CERTAINLY NEGATE THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY ACCORDED TO PROSECUTION WITNESS P/INSP. JEAN FAJARDO.[23]

Accused-appellant Phoebe Astudillo, on the other hand, contends that—

I. THE LOWER COURT ERRED IN CONVICTING THE HEREIN ACCUSED-APPELLANT OF THE CRIME CHARGED EVEN IF SERIOUS DOUBTS EXISTED AND THE REQUIRED MEASURE OF PROOF BEYOND REASONABLE DOUBT HAD NOT BEEN SATISFACTORILY MET.

II. THE LOWER COURT ERRED IN NOT GIVING CREDIT TO THE TESTIMONY OF THE HEREIN ACCUSED-APPELLANT AND IN NOT ACQUITTING HER OF THE CRIME CHARGED.

III. THE LOWER COURT ERRED IN TOTALLY DISMISSING AND NOT GIVING CREDIT TO THE TESTIMONY OF THE WITNESSES FOR THE HEREIN ACCUSED-APPELLANT NAMELY: P/CAPT.

EFREN C. VALMORES AND PEDICAB DRIVER FERNANDO DAVID.

IV. EVEN ASSUMING ARGUENDO THAT THE ACCUSED IS LIABLE, THE LOWER COURT ERRED IN IMPOSING THE DEATH PENALTY: (A) NOT ONLY BECAUSE THE ATTENDANT CIRCUMSTANCES DID NOT JUSTIFY THE IMPOSITION OF THE CAPITAL PENALTY, (B) BUT ALSO BECAUSE THE DEATH PENALTY IS UNCONSTITUTIONAL.[24]

First. At bottom, the question in this case is the credibility of the parties and their witnesses. This Court will not disturb the judgment of the trial court in assessing the credibility of the witnesses, unless there appears in the records some facts or circumstances of weight and influence which have been overlooked or the significance of which has been misinterpreted by the trial court.[25] This is because the trial judge has the unique opportunity, denied to the appellate court, to observe the witnesses and to note their demeanor, conduct and attitude under direct and cross-examination.[26]

In this case, the evidence in the records fully supports the trial court's findings that accused-appellants tried to sell a regulated drug without the requisite authority to do so. Three of the alleged eyewitnesses testified before the lower court. They were Fajardo, Pedroza and Valmores. Fajardo was presented by the prosecution. She claimed that their group conducted a buy-bust operation, resulting in the apprehension of herein accused-appellants. However, the defense presented the testimony of Valmores which contradicts Fajardo's claim. Valmores testified that the buy-bust operation on May 20, 1998 was not successful.[27] He claimed that while the group was inside the McDonald's Restaurant, accused-appellant Ku Sho Ping arrived and gave a letter to Fajardo which apparently made the latter angry; that Fajardo went downstairs and left with Mang Boy after telling Valmores to stay behind; that Valmores was later ordered by Fajardo to run after a Chinese woman (apparently Ku Sho Ping) who had escaped; and that shortly after that he (Valmores) saw accused-appellant Phoebe Astudillo being placed under arrest by SPO2 Reynaldo Palma.

The fact that Valmores saw accused-appellant Ku Sho Ping leave after handing a letter to Fajardo, who allegedly became angry after reading it, does not mean the sale of shabu did not take place. Nor is Valmores' interpretation that Fajardo became angry after reading the letter necessarily correct. It could just as well be that Fajardo destroyed the note because he had already read it and understood its contents. The fact remains that Fajardo and Mang Boy followed accused-appellant Ku Sho Ping downstairs while Valmores stayed behind. It is also possible that Valmores did not recognize Phoebe Astudillo. After all, Valmores said he did not even know the suspects who were the objects of the buy-bust operation.

Thus, nothing in the testimony of P/Insp. Efren Valmores contradicts the essential testimony of P/Insp. Jean Fajardo that, after meeting accused-appellants Phoebe Astudillo and Ku Sho Ping on the second floor of McDonald's Restaurant, she agreed to go with them in front of the restaurant and it was there that the buy-bust took place. Indeed, P/Insp. Valmores's testimony, which the defense presented to contradict the testimony of P/Insp. Fajardo, only succeeds in placing in doubt the credibility of accused-appellant Ku Sho Ping who claimed that she never went to McDonald's on said date and that she was nabbed by the narcotics agents while she was buying vegetables in the market.[28] This patent inconsistency in and between accused-appellant Ku Sho Ping's testimony and that of a defense witness can only undermine her alibi.

On the other hand, Fajardo's testimony is fully corroborated by PO1 Jose Pedroza. He was positioned across the table where Fajardo and accused-appellants were seated. Pedroza testified:

Q: On May 20, 1998, where were you?

A: I was in the office, sir.

Q: And what happened in the office on that day?

A: Pol. Insp. Fajardo conducted a final briefing on us concerning the buy-bust operation before the jump-off.

Q: And what time was the jump-off?

A: Around 2:05 in the afternoon, sir.

Q: At 2:05 in the afternoon, you proceeded to the area, is that correct?

A: To the WPD Headquarters, for proper coordination, sir.

x x x x x x x x

Q: After the coordination process, where did you go?

A: We proceeded to the place where the operation was to be conducted.

Q: And what was the place?

A: McDonald's Restaurant along Claro M. Recto, Divisoria, Manila.

Q: And what time did you arrive in that place?

A: At 5:40 p.m., sir.

Q: Upon arrival to the place of operation in McDonald's Restaurant along Claro M. Recto, Divisoria, what happened next?

A: Bumaba siya [Jean Fajardo] sa kotse, pumunta sa McDonald's Restaurant.

x x x x x x x x

Q: When you saw Jean Fajardo alight and enter [the] . . . Restaurant, what happened next?

A: I followed her inside the restaurant, sir.

x x x x x x x x

Q: And what happened inside the restaurant?

A: On going up the restaurant, I saw Pol. Insp. Fajardo together with the confidential informant seated.

x x x x x x x x

Q: And when you saw them, what did you do?

A: I occupied a nearby table and sat facing the two.

Q: How far was the table where you were seated in the table [from] where the[y] were seated?

A: More or less 4 meters away, sir.

x x x x x x x x

Q: After that, what happened next?

A: While I was sitting, two women arrived and joined the table of Pol. Insp. Fajardo and the confidential informant.

Q: Will you please look around the court and see if these two women who seated with Fajardo and the confidential informant are around, will you please point to them?

A: Witness pointing to two women who answered by the name of Phoebe Astudillo and Ku Sho Ping.

x x x x x x x x

Q: Are there other things you saw?

A: I saw Pol. Insp. Fajardo show to the two women the boodle money contained in the attaché case.

Q: How did you know that the attaché case contained money?

A: Because we were the ones [who] prepared the boodle money in the buy-bust operation.

Q: How much was the actual cash of money?

A: P700,000.00

Q: And how much did you prepare as boodle money?

A: 1.4 million, sir.

Q: All in all?

A: 2.1 million, sir.

Q: After this incident, when they are shown the boodle money, what happened next?

A: Accused Ku Sho Ping went down from the restaurant, sir.

Q: And when you saw this, what happened next?

A: After a few minutes, accused Phoebe Astudillo and Pol. Insp. Fajardo also went down, sir.

Q: And when you saw this, what happened?

A: After a few minutes I also went down.

Q: And when you were already downstairs, did you see anything or what happened next?

A: I saw accused Astudillo and Pol. Insp. Fajardo standing outside the entrance of the restaurant.

Q: When you saw this, what did you do?

A: I went out from the restaurant and pretended to be looking at the wares being sold outside the restaurant.

Q: And how far was this area where you were looking the wares?

A: Approximately 5 to 10 meters, sir.

Q: How long did you do this?

A: A few minutes only, sir.

Q: And after doing this, what transpired next?

A: I saw accused Ku Sho Ping carrying a gold plastic bag approaching Accused Astudillo and Pol. Insp. Jean Fajardo.

Q: When you saw this, how far was Ku Sho Ping away from the accused Astudillo and Pol. Insp. Jean Fajardo?

A: More or less 2 or 3 meters apart, sir.

Q: And you saw Ku Sho Ping approach the two, is that correct?

A: Yes, sir.

Q: After seeing them together, what happened next?

A: After accused Ku Sho Ping got near Pol. Insp. Fajardo and accused Astudillo, they changed places and at this point, accused Ku Sho Ping opened the gold plastic bag that she was carrying and Pol. Insp. Fajardo placed his right hand inside the bag.

Q: After this happened, what else happened?

A: At the time Pol. Insp. Fajardo placed her hand inside the bag, I moved towards them.

Q: While you were moving towards the three, what things happened if any?

A: I saw Pol. Insp. Fajardo raised her sunglass to her forehead which was the pre-arrange signal that the buy-bust operation had been consummated.

Q: And when you saw this, what did you do?

A: I rushed towards the three, so that I could assist Police Insp. Fajardo in effecting the arrest of the two accused.

Q: Did you in fact arrest the two accused?

A: Yes, sir.

Q: After the arrest, what happened next?

A: We brought them to our office, sir.

Q: And what did you do at the office?

A: The three kilos of suspected shabu that was confiscated from accused Ku Sho Ping was turned over to Pol. Chief Insp. Pepito Yu Domantay, and we learned that the buy-bust money had been taken away. (naitakbo)

Q: And what else did you do in the office?

A: We were instructed by our superior to follow-up about the missing buy-bust money.

Q: And did you in fact make a follow-up?

A: Yes, sir.

Q: And what time was that?

A: Upon arriving at our office, we went back at the scene of the operation.

Q: And what was the result of going back there?

A: We were not able to recover the missing buy-bust money.

Q: And after you were not able to recover that buy-bust money, what happened next?

A: We went back to our office.

Q: And what did you do?

A: We helped each other in preparing necessary papers for the filing of a drugs case against the accused.[29]

Between the uncertain testimony of Valmores and the categorical testimony of Pedroza, there can be no doubt about the choice to be made by this Court. Indeed, Pedroza was at a vantage position to see the whole buy-bust operation.

Valmores also denied that there was any briefing before the buy-bust operation was staged, obviously to emphasize that there was no buy-bust operation at all but that accused-appellants were simply nabbed in Divisoria. However, not only is this contrary to the presumption of good faith and regularity in the performance by public officers of their official functions. It is also absurd. For if Valmores had been named a member of the buy-bust team — as he indeed was — it should have occurred to Valmores to insist on a briefing before joining the rest of the team in going to Divisoria. But Valmores did not ask — if he is to be believed — and so he did not even know whom they were going to arrest. Indeed, Valmores's testimony on this point is inconsistent. At one point he said there was no briefing but at another he said there was. Thus, he testified:

Q. Captain, do you remember where were you at 5:00 to 6:00 o'clock in the afternoon of May 20, 1998?

A. I was at McDonald's Restaurant, Divisoria.

Q. Who were your companions if any when you went to McDonald's Divisoria on that date?

A. I was with PO1 Sistemio.

Q. Were you only two with PO1 Sistemio?

A. Yes, Sir.

Q. Upon reaching McDonald's at Divisoria, where did you go?

A. We were inside at the second floor of McDonald's.

Q. Why did you go to McDonald's Restaurant on that date?

A. We were there in connection with a buy-bust operation on drugs.

Q. Was there a briefing prior to your job on McDonald's?

A. There was supposed to be a briefing before the operation to be held at our Camp at Fort Bonifacio but it did not push through, and the second meeting was held in Divisoria.

Q. Do you remember who conducted the briefing?

A. Lt. Jean Fajardo and Col. Pepito Dumantay.

Q. What time was that in the afternoon of May 20, 1998?

A. About 5:00 in the afternoon, sir.

Q. How many were you who attended that briefing at McDonald's?

A. There was no briefing held in McDonald's Divisoria.

Q. When you were seated on the second floor of McDonald's Restaurant, what transpired next?

A. We waited for Lt. Fajardo and Mang Boy to arrive at the Restaurant.

x x x x x x x x

Q. Were you able to wait for Fajardo and Mang Boy?

A. Yes, Sir.

Q. When they arrived, where did they place themselves?

A. They sat near us, Sir.

THE COURT:

By the way, who was the subject of the buy-bust operation?

A. At that time, I don't know who was the subject of the buy-bust operation, only Lt. Fajardo and Mang Boy knew the identity.

Q. What was your role then in going to McDonald's?

A. I am supposed to be the arresting officer, Sir.[30]

Accused-appellant Ku Sho Ping contends that the presumption of regularity in the performance of the duties of the police officers, particularly of P/Insp. Jean Fajardo, has been overcome by the fact of the buy-bust team's seeming unconcern in recovering the P700,000.00 ostensibly used to buy shabu from accused-appellants.[31]

The contention has no merit. The allegation of lack of concern on the part of the police officers to recover the money is simply not true. Fajardo held fast to the attaché case containing the money. Upon seeing Astudillo hand the attaché case to a Chinese-looking man, Fajardo ordered a team member, PO1 Peter Sistemio, to go after the man. Domantay likewise ordered Valmores to try to recover the money. Pedroza admitted he was ordered by Domantay to recover the money. These circumstances belie accused-appellants' allegation of indifference on the part of the police officers.

Indeed, the claim of accused-appellants that the police showed no concern over the loss of the money is a bare allegation without any evidence to support it. Therefore, it is insufficient to overcome the presumption in favor of the police officers.

Second. Accused-appellant Astudillo contends that the trial court erred in convicting her and co-accused Ku Sho Ping of illegal sale of 2,978.30 grams of shabu because prosecution witness Aileen U. Bernido mentioned different weights of the alleged shabu.[32]

The contention has no merit.

Bernido testified that the gross weight of the shabu placed in a transparent plastic bag was 3,015.10 grams; that its net weight was 2,978.30 grams; and that the pure substance, i.e., shabu less the adulterants, weighed 1,907.21 grams.[33] While the transcript of stenographic notes mentions a gross weight of 2,078.30 grams, this appears to be a mere error in the transcription, the correct weight being 2,978.30 grams. Nevertheless, it is such a minor detail that would not at all affect the essence of her testimony that the weight of the shabu less the adulterants is 1,907.21 grams.

Third. The prosecution has established with moral certainty all the elements necessary in every prosecution for the illegal sale of shabu, to wit, (1) the identity of the buyer and the seller, the object and the consideration, and (2) the delivery of the thing sold and the payment therefor. In the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court.[34] Neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation. The only elements necessary to consummate the crime is proof that the illicit transaction took place, coupled with the presentation in court of the corpus delicti or the illicit drug as evidence.[35] Both were satisfactorily proved in the case at bar.

With these circumstances, the defense of denial of accused-appellants cannot prevail. The defense of denial or frame-up, like alibi, has been viewed by the Court 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.[36]

We likewise reject the contention of accused-appellant Astudillo that a finding of probable cause and the filing of a charge for theft against Fajardo and Palma for stealing her money enhances the plausibility of the theory of the defense on the May 20, 1998 incident for being non sequitur. Even assuming the charge to be true and meritorious, such would only constitute another crime on the part of the concerned police officers, separate and distinct from the case at bar. Such would not result in the acquittal of accused-appellants for the crime of illegal sale of shabu, or even serve to mitigate their liability.

Fourth. We agree with accused-appellants, however, that the trial court erred in imposing on them the death penalty.

Section 20, Article IV of R.A. No. 6425, as amended by R.A. No. 7659, provides:

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 x x x x x

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

The first paragraph of §15, Article III of R.A. No. 6425, as amended, states:

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.

Under Section 23 of R.A. No. 7659, amending Article 62 of the Revised Penal Code, the maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group, i.e., defined as a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of any crime.[37] The trial court erred in finding that accused-appellants

constituted an organized or syndicated crime group. While it is true that they confederated and mutually helped one another for the purpose of gain, there is no proof that they were part of a group organized for the general purpose of committing crimes for gain, which is the essence of an organized or syndicated crime group.[38]

And even if the existence of an organized or syndicated crime group as an aggravating circumstance has been proved, it cannot be considered for the purpose of imposing the maximum penalty because it was not alleged in the information. Rule 110, §8 of the Revised Rules of Criminal Procedure, which took effect on December 1, 2000, provides that qualifying and the aggravating circumstances[39] must be alleged, otherwise they cannot be considered even if proven. This provision being favorable to the accused may be given retroactive effect in this case. In addition, “statutes regulating the procedure of the court will be construed as applicable to actions pending and undetermined at the time of their passage. Procedural laws are retroactive in that sense and to that extent.”[40] As the aggravating circumstance that the offense had been committed by an organized or syndicated crime group was not alleged in the information in this case, the same cannot be appreciated against accused-appellants.

As to the amount of fine, the fine of P30,000.00 each imposed on the accused-appellants by the trial court should be increased to P500,000.00 in accordance with recent jurisprudence.[41]

WHEREFORE, the decision of the Regional Trial Court, Branch 18, Manila, finding accused-appellants Phoebe Astudillo and Ku Sho Ping guilty of violation of Art. III, §15, in relation to Art. IV, §21 of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act, as amended, is AFFIRMED with the MODIFICATION that the sentences imposed on accused-appellants Phoebe Astudillo and Ku Sho Ping are each reduced to reclusion perpetua while the fine on each of them is increased to P500,000.00.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur.
Austria-Martinez, J., on leave.

[1] Per Judge Perfecto A.S. Laguio, Jr.

[2] Rollo, p. 8; Records, p. 1.

[3] Records, pp. 46-47.

[4] Also known as PO1 Jose Pedrosa, Jr. in the Records.

[5] Also known as C/Insp. Pepito Dumantay in the Records.

[6] TSN (P/Insp. Jean S. Fajardo), pp. 59-65, Oct. 29, 1998.

[7] Id., pp. 65-73.

[8] TSN (PO1 Jose Pedroza, Jr.), pp. 8-9, March 12, 1999.

[9] Also known as Balmores in the Records.

[10] TSN (P/Insp. Fajardo), pp. 2-3, Jan. 20, 1999; TSN (P/Insp. Fajardo), p. 12, Jan. 27, 1999.

[11] TSN (P/Insp. Fajardo), p. 74, Oct. 29, 1998; TSN (PO1 Pedroza, Jr.), pp. 11-12, March 12, 1999.

[12] TSN (P/Insp. Fajardo), pp. 76-95, Oct. 29, 1998; p. 53, Jan. 20, 1999; pp. 30-31, Jan. 27, 1999; TSN (PO1

Pedroza), pp. 15, 34-39, 56-58, March 12, 1999; pp. 21, 26, March 19, 1999.

[13] TSN (P/Insp. Aileen Bernido), pp. 5, 12-28, 33, 37, 39-43, Oct. 29, 1998.

[14] TSN (Ku Sho Ping), pp. 7-19, May 14, 1999.

[15] TSN (Mercedes dela Peña), pp. 5-7, Aug. 5, 1999.

[16] Phoebe Astudillo and her husband were detained at the Quezon City Jail for a charge relating to shabu transactions. Memorandum for Accused Astudillo, p. 19; Rollo, p. 252.

[17] TSN (Phoebe Astudillo), pp. 10-11, 17-19, 21, 28-49, July 7, 1999.

[18] TSN (Fernando David), pp. 4-12, July 20, 1999.

[19] TSN (P/Insp. Efren C. Valmores), pp. 5-21, May 21, 1999.

[20] Rollo, pp. 22-26; Records, pp. 290-294.

[21] Decision, p. 4; Rollo, p. 25.

[22] Appellant's Brief (Ku Sho Ping), p. 1; Rollo, p. 86.

[23] Supplemental Appellant's Brief (Ku Sho Ping), p. 2; Rollo, p. 216.

[24] Appellant's Brief (Phoebe Astudillo), pp. 2-3; Rollo, 170-171.

[25] *People v. Ayungon*, G.R. No. 137752, June 19, 2001; *People v. Molina*, 336 SCRA 400 (2000); *People v. Gado*, 298 SCRA 466 (1998); *People v. Dismuke*, 234 SCRA 51 (1994), citing *US v. Ambrosio*, 17 Phil 295 (1910).

[26] See *People v. Geral*, 333 SCRA 453 (2000), citing *People v. Ocsimar*, 253 SCRA 689 (1996), *People v. Victor*, 292 SCRA 186 (1998).

[27] TSN (P/Insp. Valmores), pp. 19-20, May 21, 1999.

[28] TSN (Ku Sho Ping), pp. 17-19, May 14, 1999.

[29] TSN (PO1 Pedroza), pp. 11-24, March 12, 1999.

[30] TSN (P/Insp. Valmores), pp. 5-8, May 21, 1999.

[31] Supplemental Appellant's Brief (Ku Sho Ping), pp. 2-4; Rollo, pp. 216-218.

[32] Reply (Phoebe Astudillo), pp. 1-2.

[33] TSN (P/Insp. Aileen Bernido), pp. 17-36, Oct. 29, 1998; Exhs. B, C, D, F, and G.

[34] *People v. Bongalon*, G.R. No. 125025, Jan. 23, 2002; *People v. Khor*, 307 SCRA 295 (1999), *People v. Lacbanes*, 270 SCRA 193 (1997).

[35] *People v. Gonzales*, G.R. No. 143805, April 11, 2002, citing *People v. Fabro*, 325 SCRA 285 (2000), *People v. Chen Tiz Chang*, 325 SCRA 776 (2000).

[36] *People v. Uy*, 327 SCRA 335 (2000), citing *People v. Lacbanes*, 270 SCRA 193 (1997), *People v. Alegro*, 275 SCRA 216 (1997), *People v. Enriquez*, 281 SCRA 103 (1997).

[37] See *People v. Esparas*, 292 SCRA 332 (1998).

[38] See *People v. Alberca*, 257 SCRA 613 (1996).

[39] Rule 110, §8 states in pertinent parts:

Designation of the offense. – The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

[40] See, *People v. Moreno*, G.R. No. 140033, Jan. 25, 2002, *People v. Ramirez*, G.R. No. 136094, April 20, 2001, *People v. Bragat*, G. R. No. 134490, Sept. 4, 2001, *People v. Arrojado*, 350 SCRA 679 (2001).

[41] *People v. Concepcion*, G.R. No. 133225, July 26, 2001; *People v. Bucao Lee*, G.R. No. 140919, March 20, 2001.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.