

## ELIZA ABUAN, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. NO. 168773. October 27, 2006*

Ponente: CALLEJO, SR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-168773/>

---

### CALLEJO, SR., J.:

Before the Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 25726 and Resolution[2] denying the motion for reconsideration thereof. The CA affirmed the Decision[3] of the Regional Trial Court (RTC), Branch 41, Dagupan City in Criminal Case No. 98-02337-D, convicting Eliza T. Abuan of violating Section 16, Article III of Republic Act (R.A.) No. 6425, as amended, otherwise known as The Dangerous Drugs Act of 1972.

#### The Antecedents

A criminal complaint was filed in the Municipal Trial Court (MTC) of Calasiao, Pangasinan charging Abuan with violating R.A. No. 6425, as amended. On May 8, 1998, she filed a motion to quash the criminal complaint, praying that pending the resolution of her motion, she be allowed to post bail without waiving her right to question her arrest and assail Search Warrant No. 98-62.[4] The public prosecutor conformed to the motion. Thus, the motion was granted and bail was fixed at P60,000.00.[5]

The MTC found probable cause against Abuan for violation of Section 16, Article III of R.A. No. 6425, as amended, and recommended the filing of an Information against her. It ordered the elevation of the records to the RTC for further proceedings.

On November 12, 1998, an Amended Information was filed in the RTC of Dagupan City, charging Abuan with violating Section 16, Article III of R.A. No. 6425, as amended. The inculpatory portion of the Information reads:

That on or about 8:45 o'clock in the morning of May 6, 1998 at Brgy, Lasip, [M]unicipality of Calasiao, [P]rovince of Pangasinan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there, willfully, unlawfully and feloniously has in her possession, custody and control of the following to wit:

Fifty seven (57) small heat-sealed plastic sachets of met[h]amphetamine hydrochloride (shabu) weighing 5.67 grams.

one (1) roll aluminum foil and assorted plastic (luminous) sachets.

without authority to possess the same.

CONTRARY to Art. III, Section 16 of R.A. 6425, as amended.[6] During the arraignment on November 12, 1998, the accused, assisted by counsel, pleaded not guilty to the charge.[7] During the pre-trial on November 19, 1998, Abuan rejected the prosecution's proposal for her to admit the validity of Search Warrant No. 98-62, and that, in the enforcement thereof, 57 sachets of shabu were found in her house and later confiscated by the policemen.[8] She maintained that the warrant was invalid and that any material allegedly confiscated from her house was

inadmissible in evidence.

The court set the initial presentation of evidence by the prosecution on December 3, 1998. However, on said date, accused filed a Motion to Suppress Evidence, alleging that there was no probable cause for the issuance of Search Warrant No. 98-62; the applicant, Cesar Ramos, had no personal knowledge of his claim that she had in her possession methamphetamine hydrochloride (shabu) and other drug paraphernalia; Marissa Gorospe was a fictitious person, and her testimony was fabricated to convince the Executive Judge to make a finding of probable cause required for the issuance of a search warrant; and the Executive Judge failed to ask searching questions and elicit from "Gorospe" the particularity of the alleged paraphernalia in Abuan's possession. Abuan asserted that since the search warrant is void, whatever evidence was discovered as a result of the search conducted based on the warrant was inadmissible in evidence.[9]

Instead of allowing the accused to present her evidence in support of her motion, the court declared that any such evidence may be adduced at the trial.[10]

#### The Case for the Prosecution

At around 8:30 a.m. on May 5, 1998, SPO2 Marcelino Gamboa and SPO2 Beliguer de Vera of the Calasiao Police Station received information from a confidential informant that Abuan was conducting illegal drug activities in her house at Barangay Lasip, Calasiao, Pangasinan. Acting on the said information, Gamboa and de Vera conducted surveillance-monitoring operations on her residence, three times for more than an hour. They saw more or less 20 people who were coming in and out of Abuan's house. According to the informant, these people were drug addicts,[11]and Abuan was a known drug pusher.[12] On the same day, the officers, through SPO3 Cesar Ramos, applied for a warrant[13] with Executive Judge Eugenio G. Ramos of the RTC in Lingayen, Pangasinan, to search the house of Abuan for violation of Section 16, Article III of R.A. No. 6425, as amended, and the seizure of methamphetamine hydrochloride (shabu), weighing scale, aluminum foil, and burner.

The application was docketed as Search Warrant No. 98-62. To establish probable cause for the issuance of a search warrant, Ramos presented their informant, Marissa Gorospe, who was subjected to searching questions by the Executive Judge.[14]

Gorospe testified that she was a resident of Barangay Sapang, Manaoag, Pangasinan. She knew Abuan because they were employed as dealers of Avon Cosmetics. Abuan was a prominent personality in Barangay Lasip.[15] Her unnumbered house is a green bungalow-type, cemented and decorated with ornamental plants up front. She visited Abuan in her house at least three to four times a week.[16] She first came upon the drugs in Abuan's house when the latter invited her to a "jamming" and drinking session. She refused because she had to go home to Barangay Sapang, Manaoag, Pangasinan, a place of considerable distance from Calasiao.[17] Abuan then suggested that they use the shabu that she kept inside her bedroom instead. Abuan kept a substantial amount of shabu in her house and sold it.[18] The informant further narrated that several people, including teenagers, arrived in the house of Abuan and bought the substance.[19] During her visits, she observed that Abuan placed shabu inside plastic bags. She also saw weighing scales and paraphernalias used in sniffing shabu. Being a mother herself, she did not want teenagers and her children to become drug addicts.[20] Gorospe identified and affirmed the truth of the contents of her deposition.[21]

The Executive Judge found probable cause and issued Search Warrant No. 98-62 which reads:

TO ANY OFFICER OF THE LAW:

G R E E T I N G S :

It appearing to the satisfaction of the undersigned after examining under oath thru searching questions on the

applicant, SPO3 Cesar A. Ramos, PNP, and his witnesses that there is probable cause to believe that the respondent is in possession without any authority to do so in violation of R.A. 6425 of the following:

Met[h]amphetamine Hydrochloride (shabu)  
Tooter  
Weighing Scale  
Aluminum Foil  
Burner

which she keeps and conceals in her house premises at Brgy. Lasip, Calasiao, Pangasinan, which should be seized and brought to the undersigned.

YOU ARE HEREBY COMMANDED to make an immediate search at any time of the day or night and take possession of the above-described properties and bring them to the undersigned to be dealt with as the law directs.

This Search Warrant shall be valid only for ten (10) days from its issuance, thereafter, the same shall be void.[22]

On May 6, 1998, police operatives composed of Col. Fidel Posadas, Major Froilan Perez, SPO2 Gamboa, SPO2 Madrid, SPO2 de Vera, PO2 Tomelden, PO2 Rosario, PO3 Ubando, PO1 Moyano and PO3 Vallo went to Barangay Lasip to enforce the search warrant. However, before proceeding to Abuan's residence, the policemen invited Barangay Captain Bernardo Mangaliag and Kagawad Miguel Garcia of Barangay Lasip to witness the search.

Upon arriving at the premises, Officers De Vera, Gamboa and Garcia and Mangaliag entered the house; the rest of the policemen remained outside. Mangaliag introduced the police officers to Abuan who presented Search Warrant No. 98-62 to her. Abuan read the warrant and permitted the officers to conduct the search.[23]

De Vera, Mangaliag, Gamboa and Garcia entered the bedroom and found 57 sachets of suspected shabu, one roll of aluminum foil and assorted luminous plastic sachets in the drawer just beside Abuan's bed.[24] The police officers confiscated all these and brought them, along with Abuan, to the police station where an inventory of the items was made. Mangaliag and Garcia affixed their signatures on the inventory/receipt,[25] but Abuan refused to sign it.[26]

The police officers prepared a certification of orderly search which Garcia and Mangaliag also signed. Abuan likewise refused to sign the certification.[27] The police officers requested the PNP Crime Laboratory Unit of Lingayen, Pangasinan to conduct a laboratory examination on the confiscated substance.[28] According to the laboratory examination conducted by P/Supt. Theresa Ann Bugayong CID, Regional Chief Chemist, the 57 sachets of the suspected shabu weighing 5.67 grams gave positive results for the presence of methamphetamine hydrochloride, a regulated drug.[29]

After presenting its witnesses, the prosecution offered in evidence Search Warrant No. 98-62, the Receipt of the Property Seized, the Physical Science Report and the articles confiscated from Abuan's house.[30] However, Abuan objected to the admission of the search warrant and the articles confiscated based thereon on the ground that the warrant was issued without probable cause.[31] The court admitted the documentary evidence of the prosecution subject to the comment or objection interposed by accused and the eventual determination of their probative weight.[32]

#### The Case for the Accused

Abuan testified that she was jobless in 1998. Her parents and her sister Corazon Bernadette sent her money from

Canada once or twice a month to support her and her daughters. It was her father who spent for the education of her daughters.[33] She was married to Crispin Abuan, a policeman, but they separated in 1997.[34] She did not know any person by the name of Marissa Gorospe. She did not work for Avon Cosmetics nor used any of its products.[35]

At around 8:30 a.m. on May 6, 1998, she was with her two daughters, 21-year old Ediliza Go and 9-year old Mae Liza Abuan.[36] They were still in bed inside their room. Suddenly, four armed men barged into their house and declared a raid.[37] About eight to ten others were outside her house. She inquired if they had a search warrant but she was not shown any.[38] The men searched her house for about 10 to 15 minutes and turned up with nothing.[39] Some of the men went out of the house and boarded a jeepney. The men outside again went into the bedroom and came out with "powder placed in a plastic." [40] At this instance, Barangay Captain Bernardo Mangaliag was brought to the scene and was shown the "powder substance" recovered from her bedroom. She refused to sign the inventory and receipt of the property seized and the certification of orderly search. However, Mangaliag signed the same.[41]

She declared that the sachets/substances which the policemen claimed to have found in her house were merely "planted" to implicate her. The raid as well as the charge against her were instigated by her brother Arsenio Tana, who was enraged when she refused his demand to entrust the properties of the family to the care of his son. It appears that Tana carried out his threat to have her house raided since the policemen did come to her house on May 6, 1998.[42] Her brother was by the gate of her house at the time of the raid.

Abuan also testified that, during the raid, she saw Tana talking to the police officers who arrested her. Abuan also declared that the money kept inside a box in her room amounting to P25,000.00 (US\$1,100.00) given by her sister Corazon Bernardino had gone missing after the raid.[43] She did not file any charge for the loss of her money because she was scared. She did not know who took it.

Barangay Captain Robert Calachan of Barangay Sapang, Manaoag, Pangasinan and Mercedes Carvajal, an employee of Avon Cosmetics in Dagupan holding the position of team leader, testified for accused.

Calachan declared that he was born in Barangay Sapang and never left the place. He was familiar with the residents of the small barangay.[44] He issued a certification[45] stating that "as per record of this barangay, a certain Marissa Gorospe is not a resident of this barangay." Before he signed the certification, he inquired from the barangay members if they knew a Marissa Gorospe, and he was told that no one by that name was a transient.[46]

Carvajal, for her part, testified that, based on the certification dated November 12, 1998 of Dagupan City Avon Branch Manager Gigi dela Rosa, "Marissa Gorospe is not a registered dealer of Avon Dagupan Branch based on our records." She did not know any Avon Cosmetics employee or dealer named Marissa Gorospe in Pangasinan. She further testified that she had been a team leader/dealer of Avon Cosmetics for 21 years already, and that Abuan was not such a dealer/employee. On cross-examination, she declared that she was a team leader of Avon Cosmetics (Dagupan Branch), and thus had no participation in the preparation of the certification of Gigi dela Rosa and was not in a position to know if the certification was correct.

On March 28, 2001, the trial court rendered a decision finding accused guilty of the charge. The dispositive portion reads:

WHEREFORE, finding accused guilty beyond reasonable doubt of a violation of Section 15 (sic), Article 6425, she is hereby sentenced to suffer an imprisonment of TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY to FOUR (4) YEARS and TWO (2) MONTHS of PRISION CORRECTIONAL.

The prohibited drug and paraphernalia seized from the accused are hereby confiscated in favor of the government and should be turned over to the Dangerous Drugs Board for disposition in accordance with law.

SO ORDERED.[47]

The trial court declared that the testimonies of police officers Gamboa and de Vera should be accorded great weight and credence as they testified positively regarding what transpired during the raid. In contrast, the testimony of accused was self-serving, negative and feeble. She failed to prove that it was her brother who manipulated the unfortunate events. Neither was she able to prove ill motive on the part of the police officers who conducted a search in her house; hence, the presumption is that they regularly performed their duties. The failure of the accused to present her two daughters as witnesses amounted to suppression of evidence, giving rise to the presumption that if they had been presented, their testimonies would be adverse to her.

On the issue of the validity of the search warrant, the court ruled that there was probable cause for its issuance. The proceedings conducted by the Executive Judge relative to the application of the police for a search warrant, its issuance and implementation were valid, regular, and in accordance with the requirements of the law and Constitution.[48] The trial court declared that Gorospe may have lied about her address and being a dealer of Avon Cosmetics; however, it does not necessarily mean that she was a fictitious person. It explained that Gorospe may have lied "a little" in order to conceal herself for her protection, but the rest of her testimony constituted sufficient evidence of probable cause.

Abuan filed her motion for reconsideration dated April 16, 2001, which the court denied in an Order[49] dated May 10, 2001. She appealed the decision to the CA, where she averred that:

I

THE LOWER COURT GRAVELY ERRED WHEN IT CONSIDERED THE ALLEGED SHABU AND OTHER PARAPHERNALIA AS ADMISSIBLE EVIDENCE AGAINST THE ACCUSED THEREBY DISREGARDING THE CONSTITUTIONAL PROHIBITION AGAINST "FRUITS" OF THE POISONOUS TREE.

II

THE LOWER COURT ERRED AND GRAVELY MISAPPRECIATED THE EVIDENCE AGAINST THE ACCUSED WHEN IT OVERLOOKED THE GLARING DISCREPANCIES IN THE TESTIMONIES OF THE SUPPOSED EYEWITNESSES.

Abuan insisted that the applicant failed to show probable cause for the issuance of Search Warrant No. 98-62. "Marissa Gorospe" is a fictitious person whose alleged testimony is fabricated and was used by the police officers to convince the Executive Judge that there was probable cause for the issuance of the search warrant when, in fact, there was none. The Executive Judge failed to ask Gorospe searching questions. Consequently, Search Warrant No. 98-62 is void and the substances and paraphernalia confiscated by the policemen are inadmissible in evidence. She further claimed that the testimonies of De Vera and Gamboa were pockmarked with inconsistencies and as such, the trial court should not have given them probative weight.

For its part, the Office of the Solicitor General (OSG) averred that the trial court merely confirmed Executive Judge Ramos' finding of probable cause. Besides, appellant failed to file a motion to quash Search Warrant No. 98-62, hence, was estopped from assailing it and the search and seizure conducted thereafter. The OSG cited the ruling of this Court in *Demaisip v. Court of Appeals*.<sup>[50]</sup> It likewise claimed that the inconsistencies adverted to by appellant pertained merely to collateral matters and were not determinative of her guilt or innocence. As gleaned from the evidence of the prosecution, her defenses could not prevail over the evidence adduced by the prosecution.

The CA rendered judgment affirming the RTC decision. The fallo of the decision reads:

WHEREFORE, for lack of merit, the appeal is DISMISSED. The assailed Decision dated March 28, 1001 in Criminal Case No. 98-02337-D of the Regional Trial Court, Branch 41, Dagupan City convicting Eliza T. Abuan of violation of Section 16, Article III of Republic Act No. 6425, as amended, is AFFIRMED. Costs against the accused-appellant.

SO ORDERED.[51]

The appellate court ruled that the prosecution adduced proof beyond reasonable doubt of Abuan's guilt for the crime charged. The alleged discrepancies in the testimonies of Gamboa and de Vera were peripheral matters. Moreover, Abuan's failure to assail the legality of the search and seizure conducted by the policemen before her arraignment was equivalent to a waiver of her right to assail the search warrant. The CA cited the ruling of this Court in *Malaloan v. Court of Appeals*.<sup>[52]</sup>

Abuan filed a motion for reconsideration,<sup>[53]</sup> reiterating her argument that the search warrant is not valid. She also argued that she did not waive her right to assail the validity of the search warrant at her arraignment and during the trial. She maintained that the CA should not rely on the evaluation by the RTC of the witnesses' credibility, and that the inconsistencies in the testimonies of the prosecution witnesses were on material relevant details.

The appellate court denied the motion in a Resolution<sup>[54]</sup> dated May 26, 2005 on its finding that no new and substantial matter was presented to warrant reconsideration thereof.<sup>[55]</sup>

In the instant petition, Abuan, now petitioner, asserts that

I

THE CA GRAVELY ERRED IN FINDING THE SEARCH WARRANT VALID DESPITE FAILURE TO COMPLY WITH THE REQUIREMENTS MANDATED BY THE CONSTITUTION.

II

THE CA ERRED IN FINDING THAT THE ISSUE OF THE VALIDITY OF THE SEARCH WARRANT WAS DEEMED WAIVED AFTER ARRAIGNMENT.

III

THE CA ERRED IN CONSIDERING THE SHABU AND OTHER PARAPHERNALIA ALLEGEDLY TAKEN FROM THE PETITIONER AS ADMISSIBLE IN EVIDENCE.

IV

THE CA ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONER.<sup>[56]</sup>

Petitioner avers that the search warrant issued by the Executive Judge was void because the circumstances leading to its issuance were not based on probable cause but on mere fabrications. She points out that according to Gorospe, she became acquainted with petitioner and visited her in her house because of their employment with Avon Cosmetics. However, considering that she and Gorospe were never employed by Avon Cosmetics and were not even acquainted, such testimony is false. Thus, the search warrant should be declared invalid as it is based on the testimony of a fictitious person, a "planted witness" with a fabricated testimony and, consequently, any evidence discovered on the basis thereof should be suppressed and excluded in accordance with Section 3(2), Article III of the Constitution. Petitioner points out that with the inadmissibility of the shabu and other paraphernalia, the appellate court should have acquitted her of the charges by reason of the prosecution's failure to prove the commission of the crime beyond reasonable doubt.

Petitioner insists that, based on the records, she sought to suppress the search warrant throughout the entire proceedings in the trial court. She rejected the prosecution's offer to admit the validity of the search warrant and even filed a motion to suppress the search. She was thus not proscribed from filing her motion to suppress the search warrant even after the arraignment.

In its Comment,[57] the OSG maintains that the search warrant is valid. It insists that the CA correctly ruled that the requisites of a valid search warrant were present, noting that the Executive Judge conducted searching questions and answers on the person of Marissa Gorospe. It asserts that, in applying for a search warrant, a police officer need not possess personal knowledge regarding an illegal activity; it is the witness who should possess such personal knowledge, and upon whose testimony under oath probable cause may be established. In this case, it was Gorospe who narrated, under oath and before the judge, her personal knowledge of (petitioner's) criminal activities.[58]

The OSG maintains that petitioner in effect waived whatever objections she had regarding the validity of the search warrant. It points out that she never questioned the warrant before the court which issued the same, never questioned nor moved for the quashal of the warrant before her arraignment. And while petitioner was allowed to present evidence on the alleged invalidity of the search warrant, this did not cure her omission or inaction in raising the issue at the proper time.

In her Reply,[59] petitioner declares that a close scrutiny of the judge's investigation of Gorospe would reveal that her personal circumstances are pivotal in her acquisition of personal knowledge regarding the alleged possession of shabu by petitioner. If these personal circumstances are fabricated, then such "personal knowledge" regarding the possession bears no credit.

Petitioner likewise maintains that contrary to the allegations of the OSG, she did not waive her right to question the validity of the warrant. She could not have done any better under the circumstances at that time because all the evidence against Gorospe was made known and available to her only after her arraignment.

The Court is tasked to resolve the following threshold issues: (a) whether petitioner waived her right to question Search Warrant No. 98-62 and the admissibility of the substances and paraphernalia and other articles confiscated from her house based on said warrant; and (b) whether the prosecution adduced evidence to prove her guilt beyond reasonable doubt for violation of Section 16, Article III of R.A. No. 6425, as amended.

The Ruling of the Court  
Petitioner Did not Waive  
Her Right to File a Motion  
To Quash Search Warrant  
No. 98-62 and for the  
Suppression of the Evidence  
Seized by the Police Officers

Section 14, Rule 126 of the Revised Rules of Criminal Procedure reads:

Sec. 14. Motion to quash a search warrant or to suppress evidence; where to file. - A motion to quash a search warrant and/or to suppress evidence obtained thereby may be filed in and acted upon only by the court where the action has been instituted. If no criminal action has been instituted, the motion may be filed in and resolved by the court that issued the search warrant. However, if such court failed to resolve the motion and a criminal case is subsequently filed in another court, the motion shall be resolved by the latter court.

The Court ruled in the Malaloan case that the motion to quash the search warrant which the accused may file shall

be governed by the omnibus motion rule, provided, however, that objections not available, existent or known during the proceedings for the quashal of the warrant may be raised in the hearing of the motion to suppress the resolution of the court not on the motion to quash the search warrant and to suppress evidence shall be subject to any proper remedy in the appropriate higher court.[60] A motion to quash a search warrant may be based on grounds extrinsic of the search warrant, such as (1) the place searched or the property seized are not those specified or described in the search warrant; and (2) there is no probable cause for the issuance of the search warrant.[61] Section 7, Rule 133 of the Rules of Court provides that the court may hear the motion, as follows:

When a motion is based on facts not appearing of record, the court may hear the matter on affidavits or depositions presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

In the present case, petitioner reserved her right to question Search Warrant No. 98-62 when she filed her motion for bail in the RTC. The public prosecutor conformed to the motion. During pre-trial in the RTC, petitioner rejected the prosecution's proposal for her to admit the validity of Search Warrant No. 98-62, insisting that it was void. In her motion to suppress, petitioner averred that the search warrant is void for the following reasons: lack of probable cause; failure of the Executive Judge to ask searching questions on Gorospe; and the evidence seized by the police officers on the basis of the search warrant are inadmissible in evidence. She likewise prayed that the search warrant be nullified, and that the evidence seized by the policemen on the basis of said warrant be suppressed.[62]

Petitioner was ready to adduce evidence in support of her motion, but the court declared that this should be done during the trial. Petitioner thus no longer assailed the ruling of the trial court and opted to adduce her evidence at the trial. She likewise objected to the admission of the search warrant and the evidence confiscated by the police officers after the search was conducted. It bears stressing that the trial court admitted the same and she objected thereto. It cannot, therefore, be said that petitioner waived her right to assail the search warrant and object to the admissibility of the regulated drugs found in her house.

On the second issue, the trial court's ruling (which the appellate court affirmed) that the prosecution adduced evidence to prove petitioner's guilt of crime charged beyond reasonable doubt is correct.

Section 16, Article III of R.A. No. 6425, as amended by R.A. No. 7659 reads:

SEC. 16. Possession or Use 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 shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

The elements of the crime of illegal possession of dangerous drugs are as follows: (a) the accused was in possession of the regulated drugs; (b) the accused was fully and consciously aware of being in possession of the regulated drug; and (c) the accused had no legal authority to possess the regulated drug.[63] Possession may be actual or constructive. In order to establish constructive possession, the People must prove that petitioner had dominion or control on either the substance or the premises where found.[64] The State must prove adequate nexus between the accused and the prohibited substance.[65] Possession of dangerous drugs constitutes prima facie evidence of knowledge or *aminus possidendi* sufficient to convict an accused in the absence of any satisfactory explanation of such possession. The burden of evidence is shifted to petitioner to explain the absence of *aminus possidendi*.[66]

We agree with the trial court's finding that, indeed, petitioner had in her possession and control 57 small, heat-sealed sachets of shabu weighing 5.67 gm when Search Warrant No. 98-62 was served on her. As testified to

by the witnesses of the prosecution, the police officers, in the presence of Garcia and Mangaliag, found the said substances in a drawer in her bedroom. Petitioner likewise failed to present any legal authority to justify her possession of the regulated drug found in her bedroom.

The mere denial by petitioner of the crime charged and her bare claim of being the victim of a frame-up by de Vera and Gamboa cannot prevail over the positive and steadfast testimonies of the police officers. Their testimonies were corroborated by the inventory/receipt of property, stating that, indeed, 57 small heat-sealed plastic sachets containing methamphetamine hydrochloride (shabu) weighing 5.67 grams were found in a drawer in petitioner's bedroom. The police officers are presumed to have performed their duties in good faith, in accordance with law. Absent any clear and convincing evidence that such officers had ill or improper motive or were not performing their duties, their testimonies with respect to the surveillance operation, the implementation of search warrant, and the seizure of the regulated drug in the house of petitioner must be accorded full faith and credence.[67] Like alibi, the defense of denial and frame-up had been invariably viewed by the courts with disfavor. Denial is a negative of self-serving defense, while frame-up is as easily concocted and is a common and standard defense ploy in most prosecutions for violation of R.A. No. 6425, as amended.[68] For the defense of frame-up to prosper, the evidence must be clear and convincing.[69]

It bears stressing that the policemen saw to it that the search of petitioner's house was conducted with the assistance and in the presence of Barangay Captain Mangaliag and Kagawad Garcia. They testified that the regulated drugs confiscated by the policemen were found in the searched premises. Petitioner failed to present clear and convincing evidence that the policemen and the barangay officials had any improper motive to frame her and falsely ascribe to her the crime of violating R.A. No. 6425, as amended.

Except for her bare testimony, petitioner failed to prove that her brother Arsenio Tana instigated the policemen to secure Search Warrant No. 98-62, conducted a search in her house, "planted" the drugs in her bedroom and stole money from her. Petitioner failed to make such a claim when she was arrested and brought to the MTC for preliminary investigation. She also failed to file any criminal complaint against the policemen and her brother Arsenio Tana for filing the fabricated charge against her and for "planting" evidence in her house. It was only when she testified in her defense in the trial court that she alleged, for the first time, that the charge against her was instigated by her brother, in cahoots with the policemen. We quote with approval the disquisitions of the OSG on this matter:

SECOND: The police officers who testified had not proven bad or ill motive to testify against accused.

The suspicion of accused that it was her brother who manipulated the events in her life is unsubstantiated and too far-fetched to happen and is, therefore, unbelievable.

The presumption, therefore, is that said police officers performed their official duties regularly (People v. Cuachon, 238 SCRA 540).

THIRD: The testimony of accused is too self-serving. It is uncorroborated.

According to her, the intrusion into her house by the police was witnessed by her two daughter (sic). However, she did not present them as witnesses.

In the case of her daughter Ediliza, she was already twenty years old at the time so that she was already mature for all legal intents and purposes. In the case of her daughter Mae Liza, who was nine years old, there was no reason why she could not articulate what she personally saw and experienced, if what she would be made to state was true.

The inability of the said accused, therefore, to present her two daughters is tantamount to a suppression of

evidence, thus raising the presumption that if they were presented, their testimonies would have been adverse to her.

Furthermore, it has been [the] consistent ruling of the Supreme Court that a plain denial or negative testimony, if unsubstantiated by a clear and convincing testimony, cannot prevail over the positive testimonies of prosecution witnesses (*People v. Amaguin*, 229 SCRA 155).

FOURTH: The other defense of accused is that it was unlikely for her to have engaged in pushing or peddling drugs for a living because she had to set a good example of decent living for the sake of her two beautiful daughters and good neighbors. Furthermore, she did not have financial problems which could have pushed her into the drug business because her sister Corazon Bernardino had been regularly sending her money.

The aforecited unlikelihood perceived by accused could not prevail over the affirmative testimonies of policemen Gamboa and de Vera who positively declared that they found 57 sachets of shabu in her room.[70]

Search Warrant No. 98-62  
Is Valid; the Articles,  
Paraphernalia and Regulated  
Drugs Found in Petitioner's Bedroom  
and Confiscated  
by the Police Officers are  
Admissible in Evidence

We agree with the ruling of the CA affirming, on appeal, the findings of the trial court that based on the deposition and testimony of Gorospe, there was probable cause for the issuance of Search Warrant No. 98-62 for violation of Section 16, Article III of R.A. No. 6425, as amended.

Section 2, Article III of the Constitution provides:

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 the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Thus, any evidence obtained in violation of this provision is inadmissible for any purpose in any proceeding.[71]

Sections 4 and 5, Rule 126 of the Revised Rules on Criminal Procedure enumerate the requisites for the issuance of a search warrant, thus:

SEC. 4. Requisites for issuing search warrant. - A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

SEC. 5. Examination of complainant, record. - The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

The requisites for the issuance of a search warrant are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts

personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized.[72]

Probable cause is defined as such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. Reasonable minds may differ on the question of whether a particular affidavit/deposition or testimony of the affiant/deponent establishes probable cause. However, great deference is to be accorded to the Judge's determination.[73] The affidavit/deposition supporting an application for a search warrant is presumed to be valid.[74]

Affidavits/depositions for search warrants must be tested and interpreted by Judges in a common-sense and realistic fashion. They are normally drafted by non-lawyers in the midst and haste of a criminal investigation. Technical requisites of elaborate specificity have no place in this area.[75] The Judge in determining probable cause is to consider the totality of the circumstances made known to him and not by a fixed and rigid formula,[76] and must employ a flexible, totality of the circumstances standard.[77] Probable cause exists if a practical, common-sense evaluation of the facts and circumstances show a fair possibility that dangerous drugs will be found in the asserted location.[78] There must be a factual showing sufficient to comprise probable cause of particular facts and circumstances so as to allow the Judge to make an independent evaluation of the matter. It is sufficient if the information put forth in the affidavit/deposition or testimony of the affiant/deponent are believed or appropriately accepted by the affiant/deponent as true.[79] Sufficient information must be presented to allow a Judge to determine probable cause; his action cannot be a mere ratification of the bare/unsubstantiated contention of others.

The general rule is that the task of a reviewing court is not to conduct a de novo determination of probable cause but only to determine whether there is substantial evidence in the records supporting the Judge's decision to issue the search warrant.[80] The reviewing court is simply to ensure that the Judge had a substantial basis for concluding that probable cause existed,[81] and once ascertained that the Judge had substantial basis for concluding that a search would unearth evidence of a wrongdoing, the determination of probable cause must be upheld. In the absence of any showing that the Judge was recreant of his duties in connection with the personal examination he so conducted on the affiants/deponent before him, there is no basis for doubting the reliability and correctness of his findings and impressions.[82]

However, the finding of probable cause of the Judge may be set aside and the search warrant issued by him based on his finding may be quashed; the evidence seized by the police officers based on said search warrant may be suppressed if the accused presents clear and convincing evidence that the police officers and/or a government informant made a deliberate falsehood or reckless disregard for the truth in said affidavit/deposition or testimony which is essential or necessary to a showing of probable cause. Such evidence must focus on the state of mind of the affiants/deponents that he was conscious of the falsity of his assertion or representation.[83] The requirement that a search warrant not issue but upon probable cause would be reduced to a nullity if a police officer and his informant are able to use deliberately falsehood allegations to demonstrate probable cause and, having misled the Judge, was able to remain confident that the ploy succeeded.[84] However, innocent and negligent omissions or misrepresentation of a police officer or government informant will not invalidate a search warrant. And even if the police officer or government informant may have deliberately made a falsehood or reckless disregard for the truth in his or her affidavit/deposition but the remaining portions thereof are sufficient to establish probable cause, the search warrant will not be quashed for lack of probable cause.[85]

The evidence presented by petitioner that Gorospe was not a resident or transient of Barangay Sapang, even if true and credible, is not at all material or necessary to the determination of probable cause. Whether petitioner and

Gorospe were dealers of Avon Cosmetics as of May 5, 1998 may be relevant to the issue of whether there was factual basis for the finding of probable cause by the Executive Judge against petitioner; however, petitioner's evidence to prove his claim is tenuous and does not warrant the quashal of Search Warrant No. 98-62 and the suppression of the evidence seized after the enforcement of the search warrant.

The evidence petitioner presented to disprove the testimony of Gorospe that they were dealers of Avon Cosmetics are her (petitioner's) testimony and that of Carvajal. The certification purportedly signed by dela Rosa, the Branch Manager of Avon Cosmetics Dagupan Branch, is hearsay because she did not testify. Carvajal admitted that she was not in a position to confirm the veracity of the contents of the certification:

PROSECUTOR JAIME DOJILLO  
ON CROSS-EXAMINATION

q

What is your position at Dagupan Avon Cosmetics?

a

Team Leader, Sir.

q

Do you have any participation in the preparation of this certification?

a

None, Sir.

q

So, you had not in position to know the truth of this certification, hence, you were not the one who prepared the same?

a

Yes, Sir.[86]

Carvajal was merely one of many team leaders of Avon Cosmetics in Dagupan City. She did not testify nor did petitioner adduce evidence that Gorospe was not such a dealer in places other than Dagupan City or Pangasinan for that matter. In fine, petitioner failed to adduce competent and credible evidence that Gorospe was not a dealer of Avon products in the branches of Avon Cosmetics other than Pangasinan. Other than the denial of petitioner and the testimony of Carvajal, petitioner failed to present evidence that she was not a dealer of Avon Cosmetics. On the other hand, the testimony of Gorospe before the Executive Judge was corroborated by the testimonies of police officers Gamboa and de Vera.

In the present case, the Executive Judge found probable cause after conducting the requisite searching questions on Gorospe for violation of Section 16, Article III of R.A. No. 6425, as amended. The trial court reviewed the testimony of Gorospe before the Executive Judge[87] and confirmed that, indeed, there was probable cause against petitioner for violation of said crime. The finding of the Executive Judge was corroborated by the testimony of police officers de Vera and Gamboa, who, in their surveillance operation, partially confirmed Gorospe's claim that, indeed, people had been going to the house of petitioner to buy shabu. The findings of the trial court were, in turn, affirmed by the CA.

The well-entrenched rule is that the findings of the trial court affirmed by the appellate court are accorded high

respect, if not conclusive effect, by this Court, absent clear and convincing evidence that the tribunals ignored, misconstrued or misapplied facts and circumstances of substances such that, if considered, the same will warrant the modification or reversal of the outcome of the case. In this case, petitioner failed to establish any such circumstance.

The trial and appellate courts ruled that petitioner possessed 5.67 gm of methamphetamine hydrochloride and sentenced her to an indeterminate penalty of two (2) years, four (4) months and one (1) day to four (4) years and two (2) months of prision correccional. The penalty imposed by the trial court and affirmed by the CA is incorrect. As the Court ruled in *People v. Tira*:<sup>[88]</sup>

Under Section 16, Article III of Rep. Act No. 6425, as amended, the imposable penalty of possession of a regulated drug, less than 200 grams, in this case, shabu, is prision correccional to reclusion perpetua. Based on the quantity of the regulated drug subject of the offense, the imposable penalty shall be as follows:

#### QUANTITY

#### IMPOSABLE PENALTY

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

49.26 grams to 98.50 grams prision mayor

98.51 grams to 147.75 grams reclusion temporal

147.76 grams to 199 grams reclusion perpetua

Considering that the regulated drug found in the possession of the appellants is only 1.001 grams, the imposable penalty for the crime is prision correccional. Applying the Indeterminate Sentence Law, the appellants are sentenced to suffer an indeterminate penalty of from four (4) months and one (1) day of arresto mayor in its medium period as minimum, to three (3) years of prision correccional in its medium period as maximum, for violation of Section 16 of Rep. Act No. 6425, as amended.<sup>[89]</sup>

The penalty imposed in the *Tira* case is the correct penalty, which should likewise be imposed against petitioner herein.

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED. The decision of the Court of Appeals in CA-G.R. CR No. 25726 is AFFIRMED WITH MODIFICATION as to penalty. Petitioner is hereby sentenced to an indeterminate penalty of from four (4) months and one (1) day of arresto mayor in its medium period as minimum to three (3) years of prision correccional in its medium period as maximum.

#### SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

---

[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Elvi John S. Asuncion and Estela M. Perlas-Bernabe, concurring; rollo, pp. 35-43.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Elvi John S. Asuncion and Aurora Santiago-Lagman, concurring; id. at 49.

[3] Penned by Judge Victor T. Llamas, Jr.; id. at 106-114.

- [4] Records, p. 11.
- [5] Id. at 12.
- [6] Rollo, p. 52.
- [7] Records, p. 49.
- [8] Id. at 51-52.
- [9] Id. at 56-57.
- [10] TSN, June 28, 2000, p. 8.
- [11] TSN, December 17, 1998, p. 9.
- [12] Id. at 7.
- [13] Rollo, p. 36.
- [14] Exhibit "3," Folder of Exhibits, p. 10.
- [15] TSN, May 5, 1998, p. 6.
- [16] Id. at 3.
- [17] Id. at 4.
- [18] Id. at 5.
- [19] Id.
- [20] Id.
- [21] Id. at 6.
- [22] Rollo, p. 51.
- [23] Id. at 37.
- [24] TSN, December 17, 1998, p. 6.
- [25] Exhibit "B," Folder of Exhibits, p. 2.
- [26] Exhibit "B-4," id.
- [27] Exhibit "C-4," Folder of Exhibits, p. 3.
- [28] Exhibit "D," id. at 4.
- [29] Exhibit "I," id. at 7.
- [30] Exhibits "A" to "I" and their submarkings; records, pp. 134-136.
- [31] Records, pp. 137-138.
- [32] Id. at 140.
- [33] TSN, June 28, 2000, pp. 3-5.
- [34] Id. at 10.

[35] TSN, January 18, 2000, p. 10.

[36] Rollo, p. 91.

[37] TSN, January 18, 2000, p. 12.

[38] Id. at 8.

[39] Rollo, p. 99.

[40] Id. at 100.

[41] Id. at 98-100.

[42] TSN, August 17, 2000, p. 4.

[43] Rollo, pp. 102-103.

[44] TSN, November 26, 1999, p. 4.

[45] Rollo, p. 60.

[46] TSN, November 26, 1999, pp. 5-6.

[47] Rollo, p. 114.

[48] Id. at 110-113.

[49] Id. at 181.

[50] G.R. No. 89393, January 25, 1991, 193 SCRA 373.

[51] Rollo, p. 43.

[52] G.R. No. 104879, May 6, 1994, 232 SCRA 249.

[53] Rollo, pp. 44-48.

[54] Id. at 49.

[55] Id.

[56] Id. at 19-20.

[57] Id. at 174.

[58] Id. at 185.

[59] Id. at 198.

[60] *Garaygay v. People*, G.R. No. 135503, July 6, 2000, 335 SCRA 272, 279-280.

[61] *Franks v. State of Delaware*, 438 US 154, 98 S.Ct. 2674 (1978); *US v. Leon*, 468 US 897, 104 S.Ct. 3405 (1984); *US v. Mittelman*, 999 F.2d 440 (1993); *US v. Lee*, 540 F.2d 1205 (1976).

[62] The pertinent allegations in the motion are as follows:

- Search Warrant No. 98-62 was issued in violation of the 1987 Constitution, particularly Article III, Section 2 thereof;

- Transcript of the proceedings shows that Cesar Ramos has no personal knowledge of his allegation that Elisa Abuan has in her possession Methamphetamine Hydrochloride (shabu) and other drug paraphernalia;
  - On the basis of Cesar Ramos' testimony alone, the search warrant should not have been issued. In the case of *Burgos v. Chief of Staff*, 133 SCRA 800, the Supreme Court held that, "the constitution required no less than personal knowledge by the complainant or his witnesses of the facts upon which the issuance of a search warrant may be justified." It must not be based on a mere information or belief (*CRUZ, Isagani, Constitutional Law*, 1993 ed., p. 142).
  - Cesar Ramos' lone witness in the application for the search warrant, an alleged Marissa Gorospe, testified before the judge, claiming personal knowledge of Elisa Abuan's possession of drugs and other drug paraphernalia;
  - Such Marissa Gorospe is fictitious and her testimony is fabricated, designed to achieve the probable cause required for the issuance of a search warrant;
  - Granting but not conceding that the alleged Marissa Gorospe and her testimony were factual, the presiding judge failed to ask searching questions as to find out from her the particularity of the paraphernalia in Elisa Abuan's possession.
  - Since the search warrant is invalidly issued, whatever "fruits" it allegedly yielded must be suppressed in accordance with Article III, Section 3(2) of the Constitution. (records, pp. 53-54)
- [63] *People v. Chua*, G.R. No. 149878, July 1, 2003, 405 SCRA 280, 288.
- [64] *People v. Tira*, G.R. No. 139615, May 28, 2004, 430 SCRA 134, 152.
- [65] *People v. Burton*, 335 Phil. 1003, 1024 (1997).
- [66] *Id.*
- [67] *People v. Saludes*, G.R. No. 144157, June 10, 2003, 403 SCRA 590, 597.
- [68] *People v. Sy Bing Yok*, 368 Phil. 326, 337 (1999).
- [69] *Asuncion v. Court of Appeals*, 362 Phil. 118, 130 (1999).
- [70] *Rollo*, pp. 151-152.
- [71] Section 3(2), Article III of the 1987 Constitution.
- [72] *People v. Francisco*, G.R. No. 129035, August 22, 2002, 387 SCRA 569, 575.
- [73] *Spinelli v. US*, 393 US 410, 89 S.Ct. 584 (1969); *US v. Leon*, *supra* note 61.
- [74] *Id.*
- [75] *US v. Ventresca*, 13 L.ed.2d 684 (1965).
- [76] *People v. Tampis*, 467 Phil. 582, 590 (2003); *Massachusetts v. Upton*, 466 US 727, 104 S.Ct. 2085 (1984).
- [77] *US v. Canan*, 48 F.3d 954 (1995).
- [78] *US v. Adams*, 110 F.3d 31 (1997).
- [79] *Franks v. State of Delaware*, *supra* note 61.
- [80] *Massachusetts v. Upton*, *supra* note 79.

[81] Jones v. United States, 362 US 257, 80 S.Ct. 725 (1960).

[82] Kho v. Makalintal, 365 Phil. 511, 517 (1999).

[83] Franks v. State of Delaware, supra note 61.

[84] Id.

[85] Id.

[86] TSN, January 18, 2000, p. 4.

[87] Supra note 14.

[88] Supra note 65.

[89] Supra note 65, at 155.

**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.