

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. LEONARD L. BERNARDINO ALIAS ONAT, ACCUSED-APPELLANT.

G.R. No. 171088. October 02, 2009

Ponente: BRION, J.

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BRION, J.:

This is an appeal from the decision of the Court of Appeals (CA)[1] finding Leonard L. Bernardino (accused-appellant) guilty beyond reasonable doubt of the illegal sale and illegal possession of shabu, penalized under Sections 15 and 16, Article III of Republic Act No. 6425 (R.A. No. 6425), as amended[2] (The Dangerous Drugs Act of 1972). The CA decision fully affirmed the judgments of conviction on the two charges rendered by the Regional Trial Court (RTC), Branch 56, Angeles City. [3]

In Criminal Case No. 96-530, the accused-appellant was accused of illegal possession of shabu under Section 16, Article III of R.A. No. 6425 under an Information that states:

That on or about the 29[th] day of September, 1996, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession and under his control SHABU (Methamphetamine Hydrochloride) weighing approximately 215 grams, which (sic) is a regulated drug, without any authority whatsoever.

ALL CONTRARY TO THE LAW.[4]

In Criminal Case No. 96-533, the accused-appellant, together with one Nestor C. Nemis, was charged with the illegal sale of shabu, penalized under Section 15, Article III of R.A. No. 6425, as follows:

That on or about the 29[th] day of September, 1996, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, did then and there willfully, unlawfully and feloniously sell and/or deliver one transparent plastic sachet of SHABU (methamphetamine Hydrochloride weighing approximately 5 grams to poseur-buyer without any authority whatsoever.

ALL CONTRARY TO THE LAW.

The accused-appellant alone stood trial as his co-accused Nestor C. Nemis, after entering a plea of not guilty, jumped bail. The accused-appellant pleaded not guilty to both charges.[5] The two criminal cases were subsequently consolidated and jointly tried.

THE ANTECEDENTS

At the trial, the prosecution and the defense presented conflicting versions of the antecedent events. The prosecution's evidence, documentary[6] and testimonial,[7] showed that the accused-appellant was arrested in a buy-bust operation by the police. The defense's evidence, through documentary evidence[8] and the testimonies of the accused-appellant and Salvador Bernardino (Salvador), showed that the accused-appellant was the victim of a

police frame-up.

The Prosecution's Version

SPO2 Daniel C. Cadiz[9] (SPO2 Cadiz), one of the prosecution witnesses, is an investigator and intelligence operative of the Regional Operations Group based at Camp Olivas, San Fernando, Pampanga (Camp Olivas). He testified that while he was at his office at around 3:00 p.m. of September 29, 1996, he received information from a female asset about a drug deal involving P3,000.00 worth of shabu (equivalent to five [5] grams)[10] that the asset arranged with a certain Onat.

SPO2 Cadiz immediately relayed the information to Chief Inspector Igmedio Cruz, Jr. who organized a buy-bust team. SPO2 Cadiz testified that the subject of the buy-bust operation would be a man riding a green Isuzu pick-up and that he (SPO2 Cadiz) was designated to act as the poseur buyer. After a briefing, he and the rest of the buy-bust team,[11] together with two (2) civilian assets, proceeded to Don Bonifacio St., Don Bonifacio Subdivision, Angeles City on board three vehicles. They arrived at the designated place at 5:30 p.m. and strategically positioned their vehicles in front of House No. 43-25 Don Bonifacio St., the place where the sale of shabu was to take place. SPO2 Cadiz was with the female asset inside a vehicle they parked by the roadside; SPO2 Cadiz was at the backseat of the vehicle while the civilian asset was at the driver's seat. At about 9:00 p.m., a green Isuzu pick-up showed up and stopped alongside and very near the vehicle of SPO2 Cadiz and the female asset. SPO2 Cadiz hid himself at the vehicle's backseat area from where he heard the conversation between the female asset and the man in the pick-up. When SPO2 Cadiz heard the female asset say "Sige. Thank you" - the pre-arranged signal to signify that an exchange of money and drugs had already taken place - he got off the vehicle and arrested the driver of the pick-up who was then holding the P3,000.00 marked money. The driver identified himself. At that point, the rest of the buy-bust team converged on the pick-up; he saw that the accused-appellant was accompanied in the pick-up by another man later identified as Nestor Nemis. Like the accused-appellant, Nestor Nemis himself was arrested by the other members of the buy-bust team. Both the accused-appellant and Nestor Nemis were subjected to a body search and the vehicle itself was searched.

In addition to the suspected shabu sold at the buy-bust and the P3,000.00 marked money recovered from the accused-appellant, SPO2 Cadiz' body search of the accused-appellant yielded the following items: (a) a white plastic bag containing other two plastic bag search containing a suspected methamphetamine hydrochloride known (shabu) weighing approximately 200 grams contained in a white big size plastic bag labeled Uniwide Sales; (b) three plastic bags each containing a quantity of suspected shabu with an approximate weight of fifteen grams; and (c) money in the amount of P2,400.00.

The search of the glove compartment of the pick-up yielded a partly burned aluminum foil with residue, a small quantity of suspected shabu, and three improvised tooters.

The arresting team forthwith took the accused-appellant and Nestor Nemis to Camp Olivas while SPO2 Cadiz personally took the confiscated items to the Philippine National Police Crime Laboratory for examination.

SPO2 Cadiz identified in court the marked money (marked with the initials "D.G.") and the confiscated shabu through the markings which he made in red ink (his own initials "DCC") on the Uniwide Sales plastic bag (Exhibit "E" with submarkings).[12] Likewise, he identified the tooter and aluminum foil (Exhibit "F" with submarkings) as the items seized from the accused-appellant, which he marked in black ink with his initials, "DCC";[13] he marked the plastic bag containing the tooter and aluminum foil with his signature and name.[14] SPO2 Cadiz also testified that he marked the three (3) small transparent plastic sachets (Exhibits "G" to "G-3") and the plastic bag (Exhibit "H") taken from the accused-appellant with his name written in red ink and initials in black ink.[15] He testified that he made these markings immediately after the buy-bust operation when he arrived

at the Regional Special Operation Office at around 9:30 p.m.[16] He personally took the confiscated items to the crime laboratory the next day at around 10:00 a.m. SPO2 Cadiz explained that they bring the evidence to the crime laboratory office as soon as possible. The administration office of the crime laboratory received the items he turned over.[17] The recipient recorded the turnover, duly affixing her signature and the time of receipt.[18] SPO2 Cadiz was then told to return that same day to receive the initial examination report.[19]

SPO4 Daniel M. Guillermo (SPO4 Guillermo)[20] is a member of the Regional Special Operation Group of Camp Olivas and heads the Pampanga Intelligence Team charged with the task of gathering information against criminal elements. He acted as team leader of the buy-bust operation conducted against the accused-appellant on September 29, 1996. SPO4 Guillermo testified that he was given P3,000.00 as buy-bust money by his superiors; he marked these with "x" and his initials, and thereafter gave the sum to SPO2 Cadiz, the designated poseur buyer.

He further testified that at around 5:30 p.m. of September 29, 1996, he and the buy-bust team were on board three (3) vehicles on Don Bonifacio St., Don Bonifacio Subdivision, Angeles City. In the course of their operation, they retrieved shabu weighing around 215 grams and other drug paraphernalia from the accused-appellant. He instructed SPO2 Cadiz to secure all the evidence consisting of the three (3) pieces of marked money, the shabu, the improvised tooter with partly burned aluminum foil with residue, and three (3) plastic bags. After the arrest, they took the accused-appellant and Nestor Nemis to Camp Olivas while the confiscated items were turned over to the forensic chemist for examination.

Daisy Babor[21] (Babor) is a forensic chemist at the PNP Crime Laboratory, Camp Olivas, San Fernando, Pampanga. On September 30, 1996, she received specimens submitted by SPO2 Cadiz for examination. She testified that she received these specimens from the laboratory's receiving clerk, Sonia Samonte, who immediately endorsed these to her after receipt from SPO2 Cadiz.[22] The specimens submitted for examination were: (a) one (1) white big size plastic bag labeled Uniwide Sales containing two (2) medium size transparent plastic bag each with white crystalline substance having a total weight of 198.324 grams; (b) a medium size transparent plastic bag containing one (1) small size heat sealed transparent plastic bag with white crystalline substance weighing 1.669 grams; (c) one (1) medium size transparent plastic bag containing three (3) small size heat-sealed transparent plastic packs each with white crystalline substance having a total weight of 11.237 grams; and (d) one transparent plastic bag containing suspected drug abused paraphernalia seeds, one (1) small piece of partly burned aluminum foil, and three (3) improvised tooters each with suspected shabu residue.[23]

Babor further testified that she immediately conducted an examination of the submitted specimens; the tests she conducted yielded positive results for shabu.[24] The results of her examination are contained in the Initial Report dated September 30, 1996 (Exhibit "B") and Chemistry Report D-604-96 dated October 1, 1996 (Exhibit "C") which Babor herself prepared. After the tests, she kept the specimens in the laboratory's evidence room that only Babor and her chief had access to. She testified that she took out these specimens from the evidence room when she brought them to court for presentation on June 23, 1997.[25]

At her direct examination, Babor confirmed the specimens she examined and identified them as the same specimens SPO2 Cadiz turned over for examination.[26]

The Version of the Defense

The accused-appellant[27] raised the defenses of denial and frame-up. He claimed that he and Nestor Nemis were used as sacrificial lambs in exchange for the freedom of one Aling Rosie who is reputed to be the queen of shabu in Angeles City, Pampanga.[28] He related that in the afternoon of September 29, 1996, he and Nestor Nemis were on their way to Angeles City, Pampanga on board an Isuzu pick-up owned by Salvador. The purpose of their

trip was to pick up a split-type aircon unit that the accused-appellant bought from Aling Rosie. They arrived at Aling Rosie's house at around 7:30 p.m.; Aling Rosie was not there and they were told by the occupant of the house to wait. Aling Rosie arrived about an hour and a half later; she immediately told them that she had to change clothes before they could proceed to do business. While waiting for Aling Rosie, they heard a commotion and about seven persons, who turned out to be police officers, entered the house and asked them to lie face down on the floor. Thereafter, the accused-appellant saw Aling Rosie crying while talking to the police officers. They were arrested right then and there and were taken to Camp Olivas. During the ride, the accused-appellant heard the policeman driving their vehicle say - [p]are ayos nahuli rin natin ang Reyna ng Angeles. Upon their arrival at Camp Olivas, the accused-appellant learned that he had been pointed to as the party who brought the shabu. The accused-appellant claimed that he was maltreated and forced to admit to the crime.

Because of his arrest and maltreatment, the accused-appellant filed an administrative complaint before the Ombudsman against the police officers who arrested him. The accused-appellant further claimed that unidentified persons approached him who offered to drop the criminal charges if he would drop his charges before the Ombudsman.

The defense also presented Salvador,[29] the accused-appellant's uncle and owner of the Isuzu pick-up the police confiscated when the accused-appellant was arrested. Salvador testified that the accused-appellant borrowed the pick-up to get an air conditioning unit.

On August 18, 1999, the RTC convicted the accused-appellant of the crimes charged; his co-accused Nestor C. Nemis was acquitted for lack of evidence. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered as follows:

- In Crim. Case No. 96-530, the Court finds the accused Leonardo L. Bernardino @ Onat guilty beyond reasonable doubt of the crime of Violation of Section 16, Article III of Republic Act 6425, as amended and said accused is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of P 20,000.00 and to pay the costs.

x x x

- In Crim. Case No. 96-533, finding the accused Leonard L. Bernardino @ Onat guilty beyond reasonable doubt of the crime of Violation of Section 15, Article III of Republic Act 6425, as amended, said accused is hereby sentenced to suffer the penalty of Two (2) years, Four (4) months and one (1) day of prision correccional, as minimum, to four (4) years and two (2) months of prision correccional, as maximum and to pay one-half (1/2) of the costs.

x x x

For lack of evidence to hold accused Nestor A. Nemis criminally liable for the crime charged, said accused is hereby acquitted with cost de oficio.

SO ORDERED.[30]

Pursuant to People v. Mateo,[31] we transferred the case, initially appealed to us, to the CA. On September 30, 2005, the CA affirmed the accused-appellant's conviction. The CA, however, modified the penalty in Criminal Case No. 96-530 and sentenced the accused-appellant to suffer the penalty of reclusion perpetua for illegal possession of shabu and to pay a corresponding fine of P1 Million. The CA affirmed the RTC's ruling in Criminal Case No. 96-533.[32]

THE ISSUE

The sole issue raised in this appeal is one of credibility - whether the lower courts committed a reversible error in giving greater weight to the testimonies of the police officers whose acts, according to the accused-appellant, were unfairly presumed to be regular. The accused-appellant also contends that the lower courts erred in disbelieving his version of the events and in disregarding his complaint before the Ombudsman against the police officers for the frame-up they contrived.

For our consideration is the question: is the prosecution's evidence sufficient to sustain the accused-appellant's conviction for the crimes charged?

THE COURT'S RULING

Although the only issue raised in this appeal relates to the credibility of the prosecution witnesses, we are driven to reexamine and modify the decisions of the RTC and CA after going over the records of this case, the transcript of stenographic notes, and the exhibits before us. We undertake this in-depth review pursuant to our authority, in appeals of criminal cases, to open up the whole case for review. We find, after this review, that both courts failed to consider the crucial fact that the accused-appellant was charged with and was convicted of two (2) crimes that, although commonly relating to dangerous drugs, are nevertheless separate and distinct from one another, particularly in terms of their elements and requisites.

Credibility of the Prosecution Witnesses

The records show that in finding the accused-appellant liable for the crimes charged, both the RTC and CA believed the testimonies of SPO2 Cadiz, SPO4 Guillermo and forensic chemist Babor showing that the accused-appellant was arrested in a legitimate entrapment operation where he was caught in the act of selling P3,000.00 worth of shabu (about 5 grams), and where he was also found in the possession of 211.23 grams of shabu and drug paraphernalia.

In believing the prosecution's version of events, the RTC pointed to the lack of evidence showing any ulterior motive or ill-will on the part of these prosecution witnesses that would impel them to falsely testify against the accused-appellant.[33] Likewise, the RTC found their testimonies credible, trustworthy and reliable under the presumption that these police officers have regularly performed their official duties.[34] On appeal, the CA disregarded the attacks on the prosecution witnesses' credibility and ruled that the inconsistencies and discrepancies the accused-appellant pointed out refer to trivial and inconsequential matters that do not pertain to the act constitutive of the offense charge.[35] The CA also ruled that drug transaction conducted in the middle of the road is not unusual, and took note that the sale of prohibited drugs to complete strangers, openly and in public places, has become a common occurrence.[36]

Our own independent assessment of the records gives us no reason to disturb the findings on the manner of, and grounds leading to, the accused-appellant's arrest. We find the testimonies of SPO2 Cadiz and SPO4 Guillermo to be consistent with one another; they sufficiently and clearly show how the accused-appellant committed the crimes charged. We likewise find no sufficient evidence establishing any improper motive on their part to falsely impute the charges against the accused-appellant. On the contrary, the accusation by the accused-appellant that he and Nemis were used as sacrificial lambs to allow the real drug offender to escape is unsupported by any evidence other than his self-serving testimony. We also doubt the veracity of this claim considering that the prosecution witnesses and the accused-appellant did not know each other prior to the buy-bust operation.[37] We do not find it likely that a person of sound disposition would willingly falsely testify against a stranger and suffer the inconvenience and the rigors of a criminal trial and the risk of exposing himself to possible criminal prosecution

for giving false testimony.

Both SPO4 Guillermo and SPO2 Cadiz were fully aware of the serious consequences of the drug charges against the accused-appellant, yet they consistently identified the accused-appellant as the person they arrested for illegal sale and illegal possession of shabu in a buy-bust operation.[38] They stood firm in their testimonies notwithstanding the administrative complaint filed against them by the accused-appellant before the Ombudsman for maltreatment, illegal detention and frame-up. Incidentally, the records show that the Ombudsman dismissed the administrative complaint against them. [39]

Aside from the lack of improper motive, the prosecution's version of events is corroborated by the prosecution's documentary and real evidence.

First, the marked money that was given to the accused-appellant during the buy-bust sale was presented during the trial as evidence. This marked money -- consisting of three (3) pieces of P1,000.00 -- bore the mark "x" with the letters D.G." identified by SPO4 Guillermo as the markings he made in what was used as marked money in the buy-bust operation.[40] SPO4 Guillermo testified that the letters "D.G." stood for his initials.[41] He testified, too, that this marked money was recovered from the accused-appellant immediately after the buy-bust took place.[42] SPO2 Cadiz testified that after the buy-bust, he recovered the marked money from the accused-appellant who was holding it in his left hand.[43]

Second, SPO2 Cadiz testified that their pre-operation briefing duly informed them that the subject of the buy-bust operation would be a man riding the green Isuzu pick-up.[44] Both SPO2 Cadiz and SPO4 Guillermo testified that the accused-appellant arrived at the designated area driving a green Isuzu pick-up and from there sold shabu to their female asset. The accused-appellant duly admitted driving a vehicle of the same make, model and color at the time of his arrest on September 29, 1996 at the designated area of the buy-bust operation.

Lastly, a Confiscation Receipt,[45] made part of the records, was signed by the accuse-appellant where he acknowledged that the following items were confiscated from him by the police at 9:00 p.m. of September 29, 1996, namely:

- (a) one (1) plastic bag labeled Uniwide Sales containing another two (2) transparent plastic bags with suspected shabu with the approximate weight of 201.04 grams;
- (b) one (1) transparent plastic sachet containing suspected shabu weighing about 5 grams in weight;
- (c) three (3) transparent plastic sachet with suspected shabu weighing about 15 grams;
- (d) P3,000.00 marked money;
- (e) P2,400.00;
- (f) three (3) pieces of improvised tooter; and
- (g) I[z]usu pick-up.

We have consistently held, on the issue of credibility, that we give the highest respect to the trial court's evaluation of the testimonies of witnesses; the trial court is in a better position than this Court to assess the credibility of witnesses since it has direct access to and observes the demeanor of these witnesses and their manner of testifying.[46] Thus, the appellate courts will generally not disturb the findings of the trial court unless the latter has plainly overlooked facts of substance and value that, if considered, would affect the results of the case.[47] We find no compelling reason to deviate from this general rule in passing upon the prosecution's version of events. In fact, and as we indicated above, our own reading of the evidence on record shows that it amply

supports the RTC and CA factual findings.

The Defenses of Denial and Frame-up

Against the hard pieces of the prosecution evidence pointing to the accused-appellant's guilt, the latter could only raise the defenses of denial and frame-up and cite the discrepancies and the incredibility of the testimonies of SPO2 Cadiz and SPO4 Guillermo. He claimed that these infirmities cast doubt on the testimonies' evidentiary value and, conversely, strengthen his own version of events.

The defenses of denial and frame-up are weak defenses that are viewed by the Court with disfavor because "they can easily be feigned and fabricated." [48] In *People v. Uy*, [49] the Court explicitly expounded on this view, as follows:

We are not unaware that in some instances law enforcers resort to the practice of planting evidence to extract information or even to harass civilians. However, like alibi, frame-up is a defense that has been invariably viewed by the Court with disfavor as it can easily be concocted [and] hence commonly used as a standard line of defense in most prosecutions arising from violations of the Dangerous Drugs Act. We realize the disastrous consequences on the enforcement of law and order, not to mention the well being of society, if the courts x x x accept in every instance this form of defense which can be so easily fabricated. x x x

The present case is no exception to what we have said above, as the accused-appellant failed to adduce clear and convincing evidence against the positive, consistent and categorical prosecution evidence pointing to his guilt of the crimes charged.

In this respect, the discrepancies the accused-appellant points out, namely: whether both witnesses spoke to the female asset prior to the buy-bust operation; whether the female asset knew the full name of the accused-appellant; and whether the police kept a dossier on the accused-appellant, all refer to events which occurred prior to the buy-bust operation. They are extraneous matters with no direct bearing on the evidence establishing the elements of the crimes charged. The inconsistencies, if any, refer to minor matters that enhance, rather than destroy, the veracity of the witnesses' testimonies; they serve to remove any suspicion that these testimonies were contrived or rehearsed. [50] More importantly, these discrepancies did not contest the categorical and consistent testimonies of SPO2 Cadiz and SPO4 Guillermo and the other prosecution evidence on the elements of the crimes charged.

Additionally, we reject the accused-appellant's argument that the lack of prior surveillance or test-buys affected the integrity of the buy-bust operation. Although test-buys for dangerous drugs provide assurance of the reliability of an informer's tip, they are not conditions sine qua non; their absence does not affect the validity of a buy-bust operation and of the credibility of police officers participating on the basis of an informer's tip. SPO4 Guillermo and SPO2 Cadiz duly justified both the lack of prior surveillance and of an existing file on the accused-appellant, when they stood by the trustworthiness and reliability of their asset whom they tried and tested in previous operations; [51] their familiarity with the female asset led the police to dispense with the need for a prior surveillance or for test-buys.

We also reject the accused-appellant's argument on the alleged impossibility of the sale of shabu in a busy street between two strangers who used two vehicles that were side by side each other. In the first place, the records show that the transaction happened inside a subdivision and not in a busy street. Even granting that the place of the buy-bust was a busy street (which fact was not established), the sale took place at night (at 9:00 p.m.) and was a five-minute transaction that was too brief to attract the attention of passersby. [52] The records also show that the position of the vehicles allowed other cars to pass and that the accused-appellant and the female asset were one-arm length away from each other and could easily make the exchange. [53]

The records further show that the drug transaction was not conducted between two strangers. The accused-appellant did not dispute knowing the female asset and admitted that he had previously gone to the female asset's place.

At any rate, we agree with the CA's observation that there was nothing unusual in drug transactions between strangers. Previous cases relating to dangerous drug violations, in fact, support this observation. A case in point would be our ruling in *People v. Chua*[54] where we said:

xxx the law does not prescribe as an element of the crime that the vendor and vendee be familiar with each other. What matters in a drug related case is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the same and delivery of the prohibited drugs...

x x x

... [D]rug pushers do not confine their trade to known customers; complete strangers are accommodated provided they have the money to pay. Moreover, why a dealer would trust a buyer, which is to say the motive behind a drug deal, is not an essential element of drug-related offense.

A Partial Modification of the Conclusion in the RTC and CA decisions is justified under the circumstances

We mentioned earlier that certain conclusions in convicting the accused-appellant were not supported by the lower courts' factual findings. We refer specifically to the lower courts' failure to consider that the accused-appellant was charged with and convicted of two district crimes that the prosecution had to prove separately in terms of their respective elements.

Criminal Case No. 96-533 for selling shabu

In a successful prosecution for illegal sale of shabu, the concurrence of the following elements must be present: (a) the identity of the buyer and the seller, the object, and consideration; and (b) the delivery of the thing sold and the payment therefor.[55] What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti or the very drugs the accused sold.[56]

Case law teaches that a common issue in drug cases involving buy-busts is the identity of the drugs allegedly sold: are these the very same drugs presented in court? Case law also teaches that this issue is commonly resolved by a scrutiny of the chain of custody of the recovered drugs. In this case, while each and every link in the chain of custody of the shabu recovered from the accused-appellant was established through the testimonial evidence of SPO2 Cadiz and forensic chemist Babor showing the movements of the shabu from the time of seizure, its marking at the police station, and its submission for laboratory examination until its presentation in court, we find that the prosecution failed to specifically identify the shabu that was actually sold at the buy-bust as among the shabu that were presented in court.

As shown by the evidence, the prosecution theorized that the accused-appellant was arrested by virtue of a legitimate entrapment operation where he was caught red-handed selling P3,000.00 worth of shabu or about five (5) grams of shabu. In proving the sale, SPO2 Cadiz testified:

Q

This motor vehicle that arrived, what type of motor vehicle is this?

A

When it was nearing to our position, the female asset told me that the subject motor vehicle was approaching and I hid myself at the back and then the motor vehicle halted very near our car and made some sort of conversation or pleasantries.

Q

Who are these?

A

The man and our asset. When I heard the utterance, the statement mentioned by our asset "Sige, [t]hank you," that is the prearranged signal to mean that the marked money of P 3,000.00 previously given to the asset was already handed over to this man who was later identified as Leonardo Bernardino and that the stuff was already in the possession of our asset.

Q

Upon hearing this signal which you said, what did you do after that?

A

I immediately got off the vehicle with a draw handgun and arrested the driver who was already holding the P 3,000.00 marked money on his left hand.[57]

He further testified:

Pros. Santos (to the witness)

Q

Mr. Witness, in the last hearing of this case when you were called to testify on direct-examination, you mentioned that you will be able to identify the shabu that you confiscated in the possession of Leonard Bernardino, and also the other stuff which you confiscated from Leonard Bernardino and Nemis at the compartment of the vehicle, is that correct?

A

Yes, sir.

Q

Could you tell us why would you be able to identify those?

A

I place my marking, sir, my name and initials, sit.

Q

In all those specimens?

A

Yes, sir.

Q

Showing to you some specimen already identified in the last hearing by SPO[4] Daniel Guillermo as Exhibits E-E-1 to E-2, Exhibits F,F-1, F-2 and F-3, Exhibits G, G-1, G-2 to G-3, could you go over these exhibits and

inform the Court if these are the same shabu which you confiscated in the possession of the accused in these cases and point to the marking that you made which you testified a while ago that you put on these?

A

Yes, sir, these are the same items.[58]

x x x

PROS. SANTOS: (to the Witness)

Q

You also identified this plastic bag which you said you confiscated from the accused, could you point to us if it is the same shabu you confiscated, will you point to us the marking?

A

My marking SPO2 Cadiz, sir, with my initials above the name in red ink.

PROS. SANTOS:

May we request, your Honor, that it be marked in evidence as Exhibit H and the markings made by the witness on the same be marked as Exhibit H-1.[59]

This testimony, however, failed to disclose and identify the shabu sold as distinguished from those found in the accused-appellant's possession. SPO2 Cadiz identified on the witness stand Exhibits E, F and G (with their corresponding submarkings) and Exhibit H as the items confiscated from the accused-appellant.[60] However, in contrast with the prosecution's declarations in the Formal Offer of Evidence,[61] Exhibit H was not categorically identified by SPO2 Cadiz as the shabu bought and sold at the buy-bust. Unlike the shabu in Exhibits E and G that SPO2 Cadiz clearly identified as the shabu taken from the accused-appellant's possession, SPO2 Cadiz' testimony with respect to the shabu marked as Exhibit H merely identified it as the plastic bag that was confiscated from the accused.[62]

This testimony should be read in relation with his earlier testimony that he only saw the accused-appellant holding the P3,000.00 marked money at the time of his arrest, not the shabu that was sold. Also, SPO2 Cadiz previously testified that he only arrested the accused-appellant after the pre-arranged signal was given by the confidential informant; he only heard and did not actually see the sale. He failed to state that he seized the actual shabu sold and to identify the person from whom the shabu sold was recovered. We cannot overlook this evidentiary gap as it involves the identification of the shabu allegedly sold, as distinguished from the shabu found in the accused-appellant's possession.

The lack of segregation between these pieces of evidence for the two different crimes charged is also very evident from an examination of the markings in the plastic sachets of shabu seized from the accused-appellant and the identification of the examined specimens in the Initial Laboratory Report and Chemistry Report No. D-604-96. Nowhere is the shabu sold specifically singled out as the specimen for the crime of illegal sale of shabu. Thus, while forensic chemist Babor duly identified and gave the results of the examinations she made, her testimony merely referred to the specimens submitted by SPO2 Cadiz[63] and could not have separately referred to the shabu illegally possessed and that illegally sold. From this perspective, no clear specific link exists between the examined specimen and the shabu allegedly sold at the buy-bust except by inference - an exercise that cannot be done in the absence of specific testimony identifying the shabu sold. This evidentiary situation effectively translates to the absence of proof of corpus delicti, and cannot but lead us to conclude that no valid conviction for the crime of illegal sale of shabu can result.

Criminal Case No. 96-530 for illegal possession of shabu

In a prosecution for illegal possession of shabu, the following elements must be satisfactorily established: (a) the accused is found in possession of a regulated drug; (b) the person is not authorized by law or by duly constituted authorities; and (c) the accused has knowledge that the said drug is a regulated drug.[64] We find that all the elements of this crime were duly proven.

The records show that the accused-appellant was found in actual possession of 211.23 grams of shabu after a warrantless search in an arrest in flagrante delicto. As testified to by SPO2 Cadiz, the plastic sachets of shabu were found in the accused-appellant's possession in the following manner:

Q

When you subjected Onat to body search, what happened then?

Witness

A

I discovered a white plastic bag containing other two plastic bags each containing a suspected methamphetamine hydrochloride known as shabu weighing approximately 200 grams contained in a white big size plastic bag labelled Uniwide Sales from his camouflage pant[s] left lower portion pocket.

x x x

Q

When you discovered another shabu on the body of Bernardino, what did you do then?

A

I found another three plastic bags each containing a quantity of suspected shabu with an approximate weight of fifteen grams from his camouflage pant[s] left side pocket x x x

Q

What about your other companions, what were they doing there?

A

SPO4 Guillermo after searching the person of Nestor Nemis, he opened the glo[v]e compartment and found a partly burned aluminum foil with residue, a small quantity of suspected shabu and three improvised tooter in the front compartment of the Isuzu Pick-up.[65]

x x x

Q

You also identified this plastic bag which you said you confiscated from the accused, could you point to us if it is the same shabu you confiscated, will you point to us the marking?

A

My marking SPO2 Cadiz, sir, with my initials above the name in red ink.

PROS. SANTOS:

May we request, your Honor, that it be marked in evidence as Exhibit H and the markings made by the witness

on the same be marked as Exhibit H-1.[66]

Actual possession exists when the drug is in the immediate physical possession or control of the accused. In this case, the drugs were found inside his clothing.[67] No evidence was ever adduced showing that the accused-appellant had authority to possess these regulated drugs.

Lastly, the surrounding circumstances indicate the accused-appellant's knowledge of the drugs in his possession. Knowledge, being an internal act, may be presumed from the failure of the accused to explain why the drug was in a place over which the accused exercised dominion and control.[68] In this case, such explanation was glaringly lacking. The only explanation offered - police frame-up - is, as discussed, a discredited one. Hence, knowing possession of the shabu by the accused-appellant is presumed under the circumstances.

In sum, we find no reversible error committed by the RTC and CA in convicting the accused-appellant of illegal possession of drugs. Section 16, Article III of R.A. No. 6425 as amended by Section 16 of R.A. No. 7659, in relation to Section 20 of R.A. No. 7659, imposes the penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos against any person caught in possession of 200 grams of shabu or more.[69] This penalty finds full application in the present case since the accused-appellant was found in illegal possession of 211.23 grams of shabu. In the absence of any aggravating or mitigating circumstances, the CA correctly imposed the penalty of reclusion perpetua conformably with Article 63 of the Revised Penal Code. The fine of P1 Million Pesos imposed is also in accordance with the law.

WHEREFORE, premises considered, the decision dated September 30, 2005 in CA-G.R. CR HC No. 00240 is **AFFIRMED** with **MODIFICATION** as follows:

- In Criminal Case No. 96-530, accused-appellant Leonard L. Bernardino alias Onat is found beyond reasonable doubt of the crime of illegal possession of shabu in violation of Section 16, Article III of R.A. No. 6425, as amended. He is sentenced to suffer the penalty of reclusion perpetua and to pay fine in the amount of One Million Pesos (P1,000,000.00).

- In Criminal Case No. 96-533, the accused-appellant is hereby **ACQUITTED** for illegal sale of shabu penalized under Section 15, Article III of R.A. No. 6425 on the ground of reasonable doubt.

SO ORDERED.

Carpio Morales, (Acting Chairperson), Ynares-Santiago, Del Castillo, and Abad, JJ., concur.

[*] Designated additional Member of the Second Division per Special Order No. 691 dated September 4, 2009.

[**] Designated Acting Chairperson of the Second Division per Special Order No. 690 dated September 4, 2009.

[1] Dated September 30, 2005; rollo, pp. 3-17, penned by Associate Justice Rosmari D. Carandang with Associate Justice Andres B. Reyes, Jr. and Associate Justice Monina Arevalo-Zeñarosa, concurring in CA-G.R. CR HC No. 00240.

[2] R.A. No. 7659.

[3] Dated August 18, 1999; records, pp. 247-262; penned by Judge Lourdes F. Gatbalite in Criminal Case Nos. 96-530 and 533.

[4] Id., p. 1.

[5] Orders dated January 14, 1997; id., pp. 59-60.

[6] Consisting of: (1) Money bills in the amounts of P3,000.00 and P2,400.00 (Exhibits A to A-20); (2) Initial Laboratory Examination Report (Exhibits B and B-1); (3) Chemistry Report No. D-604-96 (Exhibits C to C-2); (4) Joint Affidavit of Arrest (Exhibits D to D-3); (5) the shabu seized from the accused-appellant with the corresponding markings (Exhibits E to E-2, G-G-3 and H to H-4); (6) the tooter and aluminum foil with corresponding markings (Exhibits F to F-8); (7) Sketch prepared by SPO2 Cadiz (Exhibits I and I-1); (8) Pictures depicting Nestor Nemis (Exhibits J to J-2); (9) Request for Laboratory Examination dated Spetember 30, 1996 (Exhibit K); and (10) Formal Offer of Evidence; Exhibits, pp. 1-6.

[7] They are: (1) SPO2 Danilo C. Cadiz; (2) SPO4 Daniel M. Guillermo; and (3) Forensic Chemist Daisy Babor.

[8] Among others: 1) Photograph of the house (Exhibit 1 with submarkings); (2) Sketch prepared by SPO2 Cadiz (Exhibit 2 with submarkings); (3) Complaint lodged before the Office of the Ombudsman (Exhibit 3); (4) Order of the RTC appearing on page 19 of the expediente (Exhibit 4); (5) Motion for the Release of the Bond of the panel used in picking up the aircon unit and photographs thereof (Exhibit 5 with submarkings); and (6) Judicial Affidavit of Atty. Rodolfo D. Mapile (Exhibit 6) .

[9] Direct Examination; TSN, May 6, 1997, pp. 2-12 and TSN, June 3, 1997, pp. 2-5.

[10] TSN, June 3, 1997, p. 9.

[11] They are: SPO4 Daniel M. Guillermo, SPO1 Ronnie F. Sagum, SPO1 Antonio Bonaobra, and SPO1 Patrick Palisoc.

[12] TSN, May 6, 1997, p. 10; and TSN, July 21, 1997, p. 4.

[13] TSN, July 21, 1997, pp. 5-6.

[14] Id., p. 5.

[15] Id., pp. 6-8.

[16] Id., pp. 9 -10.

[17] Id., pp. 10-11.

[18] Ibid.

[19] Id., p. 12.

[20] Direct Examination; TSN, July 8, 1997, pp. 2-18.

[21] TSN, January 22, 1998, pp. 2-15.

[22] Id., p. 4.

[23] Ibid.

[24] Id., p. 6.

[25] Id., p. 15.

[26] Id., p. 9.

[27] Direct Examination, TSN, June 4, 1998, pp. 2- 15.

[28] Id., p. 3.

- [29] TSN, September 24, 1998, pp. 2-11.
- [30] Records, pp. 261-262.
- [31] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.
- [32] Rollo, p. 17.
- [33] CA Rollo, p. 28.
- [34] Id., p. 29.
- [35] Rollo, p. 11.
- [36] Id., p. 14.
- [37] TSN, May 6, 1997, p. 7; TSN, July 8, 1997, p. 6; and TSN, July 23, 1998, p. 14.
- [38] TSN, May 6, 1997, p. 7; TSN, July 8, 1997, p. 12; and TSN, August 11, 1997, p. 17.
- [39] TSN, July 23, 1998, pp. 14-15.
- [40] TSN, July 8, 1997, p. 14.
- [41] Ibid.
- [42] TSN, July 8, 1997, p. 13.
- [43] TSN, May 6, 1997, p. 6.
- [44] Id., p. 4.
- [45] Dated September 29, 1996; records, p. 5.
- [46] People v. Bohol, G.R. No. 171729, July 28, 2008, 560 SCRA 232.
- [47] People v. Flores, G.R. No. 123599, December 13, 1999, 320 SCRA 560.
- [48] People v. Ganenas, G.R. No. 141400, September 6, 2001, 364 SCRA 582.
- [49] G.R. No. 129019, August 16, 2000, 338 SCRA 232, cited in People v. Ganenas, *supra*.
- [50] Ambait v. Court of Appeals, G.R. No. 164909, April 30, 2008, 553 SCRA 295.
- [51] TSN, August 11, 1997, pp. 13-14; and TSN, June 3, 1997, pp. 9-10.
- [52] TSN, June 3, 1997, p. 18.
- [53] Id., pp. 18-20.
- [54] G.R. No. 133789, August 23, 2001, 363 SCRA 562.
- [55] People v. Uy, G.R. No. 128046, March 7, 2000, 327 SCRA 335.
- [56] People v. Garcia, *supra*.
- [57] TSN, May 6, 1997, p. 6.
- [58] TSN, July 21, 1997, pp. 2-3.
- [59] Id., p. 8.

[60] Id., pp. 3-4 and 8.

[61] Exhibits, p. 4. The Formal Offer of Evidence shows that Exhibit H was offered to prove the existence of shabu the was subject of the buy-bust conducted by the NARCOM Officials against the accused-appellant and Nestor Nemis on September 29, 1996 subject of Criminal Case No. 96-533.

[62] Supra note 61, p. 8.

[63] TSN, January 22, 1998, p. 4.

[64] People v. Nuñez, G.R. No. 177148, June 30, 2009.

[65] TSN, May 6, 1997, p. 8.

[66] TSN, July 21, 1997, p. 8.

[67] People v. Tira, G.R. No. 139615, May 28, 2004, 430 SCRA 134.

[68] Id., p. 152.

[69] 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. x x x

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 are in any of the following quantities:

x x x

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

x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from prision correccional to reclusion perpetua depending upon the quantity.

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