

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROLANDO S. DELOS REYES, ALIAS “BOTONG,” AND RAYMUNDO G. REYES, ALIAS “MAC-MAC,” ACCUSED-APPELLANTS.

G.R. No. 174774. August 31, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

On appeal is the Decision[1] dated July 12, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01733, which affirmed with modification the Decision[2] dated September 23, 2003 of Branch 214 of the Regional Trial Court (RTC) of Mandaluyong City in Criminal Case No. MC-00-2375-D. The Court of Appeals found accused-appellants Rolando S. delos Reyes and Raymundo G. Reyes (Reyes) guilty beyond reasonable doubt of violation of Section 21 of Article IV, in relation to Section 16 of Article III, of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, and imposing upon them the penalty of reclusion perpetua.

The following antecedent facts are culled from the records:

On February 17, 2000, accused-appellants Rolando S. delos Reyes and Raymundo G. Reyes, Emmanuel de Claro, and Mary Jane Lantion-Tom (Lantion-Tom) were all arrested for illegal possession, sale, delivery, distribution, and/or transportation of Methamphetamine Hydrochloride, a regulated drug commonly known as shabu. The Office of the City Prosecutor of Mandaluyong City, in its Resolution dated March 3, 2000, found probable cause to indict accused-appellants, together with Emmanuel de Claro, for violation of Republic Act No. 6425, and resolved to continue the preliminary investigation in so far as Lantion-Tom was concerned. The criminal information against accused-appellants and Emmanuel de Claro, filed with the RTC, reads:

The undersigned 2[nd] Asst. City Prosecutor accuses ROLANDO DELOS REYES y SANTOS @ BOTONG, RAYMUNDO REYES y GUINZON @ MAC-MAC and EMMANUEL DE CLARO y ENRIQUEZ @ COCOY of the crime of VIOLATION OF SEC. 21 ART. IV IN REL. TO SEC. 16 ART. III OF R.A. 6425 AS AMENDED, committed in the manner herein narrated as follows:

That on or about the 17[th] day of February, 2000, in the City of Mandaluyong, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any regulated drug, conspiring and confederating together and mutually helping and aiding one another, commit to sell, deliver, distribute and/or transport a carton of ten (10) heat-sealed transparent plastic bags containing white crystalline substance with the following grams, to wit: 99.2, 94.9, 99.6, 93.5, 98.3, 99.5, 99.6, 99.5, 98.4 and 98.4 grams or a total of 980.9 grams, which substance when submitted for drug examination, were found positive to the test for Methamphetamine Hydrochloride, commonly known as "shabu," a regulated drug, without the corresponding license and prescription.[3]

On March 7, 2000, accused-appellant Rolando delos Reyes, Emmanuel de Claro, and Lantion-Tom, insisting on their innocence, moved for a reinvestigation of their case before the RTC, which said trial court granted in an Order[4] dated March 15, 2000.

After the reinvestigation, the Office of the City Prosecutor issued a Resolution dated April 3, 2000, recommending that the RTC proceed with the indictment of accused-appellant Reyes and Emmanuel de Claro, and dismiss the charges against accused-appellant Rolando delos Reyes and Lantion-Tom. The Office of the City Prosecutor considered the different versions of events presented by the parties during the preliminary investigation and reinvestigation (except accused-appellant Reyes who did not participate in the proceedings), which it summarized as follows:

In their Joint Affidavit of Arrest, the arresting officers, members of the Intelligence and Investigation of the Regional Mobile Group (RMG) of the National Capital Region Police Office (NCRPO) claims that on 17 February 2000 a confidential informant called up relative to a narcotics drug deal to commence at the vicinity of the parking area of Shangrila Plaza Hotel, Mandaluyong City; that they were dispatched to verify the reports and conduct police operations; that about 2:00 p.m. after meeting with the confidential agent, they strategically positioned themselves at the vicinity parking area of said hotel; that about 10:00 p.m., accused/respondent Reyes a.k.a. Mac-Mac, on board a white Toyota Corolla, and accused/respondent [Rolando] delos Reyes, a.k.a. "Botong," on board a red Toyota Corolla, arrived with accused/respondent Reyes subsequently proceeding inside Whistlestop Bar and Restaurant, and accused/respondent [Rolando] delos Reyes calling accused/respondent [Emmanuel] de Claro through his cellular phone; that accused/respondent [Rolando] delos Reyes and [Emmanuel] de Claro then proceeded to the latter's parked Mazda car where respondent Lantion-Tom was waiting; from the parked car, a box in transparent plastic bag was taken, which accused/respondent [Emmanuel] de Claro handed-over to accused/respondent [Rolando] delos Reyes; accused/respondent [Rolando] delos Reyes in turn handed the box in a plastic bag to accused/respondent Reyes; that the arresting officers accosted the accused/respondents who according to the arresting officers admitted having in their possession illegal drugs; that the recovered items containing ten (10) pcs. of heat sealed transparent plastic bags of white crystalline substance with a total weight of 980.9 grams turned positive to the test for methylamphetamine hydrochloride or shabu, a regulated drug.

In his "Sinumpaang Kontra-Salaysay," accused/respondent [Rolando] delos Reyes claims that on 17 February 2000, he went to Buenas Market, Manggahan, Pasig City, together with a neighbor, one Marlon David, to talk to Raymundo Reyes who was to pay his indebtedness; that while looking for a parking space, several men with firearms suddenly appeared, with one shouting, "bukan mo ang pintuan ng sasakyan at kung hindi babasagin ko ito"; that he and Marlon David were forced out of their vehicle with one of the armed men bringing out a plastic shopping bag of Shoe Mart, asking where the said bag allegedly containing "shabu" came from; that accused/respondent [Rolando] delos Reyes answered "hindi ko alam," that he and Marlon David were blindfolded when forcibly taken to the group's vehicle and continuously asked who the source of the shabu was, with respondent/accused [Rolando] delos Reyes replying, "hindi ko alam at wala akong kinalaman diyan;" that Marlon David was separated from accused/respondent [Rolando] delos Reyes and later released on 18 February 2000; that when accused/respondent [Rolando] delos Reyes' blindfold was removed, he found himself at Camp Bagong Diwa, Bicutan, Taguig, Metro Manila.

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To confirm respondent/accused [Rolando] delos Reyes' claim, that he was arrested in Brgy. Manggahan, Pasig City, and not in the vicinity of Whistlestop Bar and Restaurant in Mandaluyong City, respondent/accused [Emmanuel] de Claro's spouse submitted a certified true xerox copy of barangay blotter of Barangay Manggahan, Pasig City, reflecting the entry on 19 February 2000 made by Mrs. Delos Reyes, on the incident reported to by Marlon David thus:

"BLOTTER"

"Dumulog po rito sa himpilan ng Punong Barangay si Gng. Virginia Delos Reyes, upang ipagbigay alam ang pagkawala ng kanyang asawa na si Mr. Rolando delos Reyes, nuong petsa 17 ng Pebrero taong dalawang libo (2000) na ayon sa batang pamangkin na si Marlon David, ay hinuli ng mga hindi kilalang lalaki sa Buenas

Market, Manggahan, Pasig City nais niyang alamin kung ang nasabing insidente ay coordinated dito sa himpilan o tanggapan ng Barangay."

(Sgd) Virginia delos Reyes
Nagpapahayag"

The blotter was apparently made after Marlon David informed Mrs. [Virginia] Delos Reyes of the incident upon his release on 18 February 2000. Another witness, one Joel Navarro, claims having seen the actual incident confirming the events as narrated to by accused/respondent [Rolando] delos Reyes and Marlon David.

Accused/respondent [Emmanuel] de Claro and his common law wife, respondent Lantion-Tom, submitted their separate Counter-Affidavits jointly denying the charges and claiming that they were at the Whistlestop Bar and Restaurant to talk to respondent Lantion-Tom's accountant Ms. Daisy Milan regarding the Mayor's Permit, Business Location Clearance issued by the Office of the Barangay Captain, insurance documents, BIR Certificate of Registration of her business; that they were with accused/respondent [Emmanuel] de Claro's brother, Roberto and a friend, James, with the two remaining outside the restaurant; that respondent Lantion-Tom went to accompany Ms. Milan, while accused/respondent [Emmanuel] de Claro was left inside; that after Ms. Milan left, respondent Lantion-Tom was suddenly surrounded by men who introduced themselves as police officers and were arresting them for being the source of "shabu" in a drug deal; that all of them, accused/respondent [Emmanuel] de Claro, Roberto and James were likewise arrested and continuously questioned on their complicity in the drug deal; that they were taken to Camp Bagong Diwa, Taguig, Metro Manila and subjected to further investigation; that Roberto and James were released the following day. Both respondents maintain that the allegations of the arresting officers as to the circumstances on the alleged "drug deal" leading to their arrest are unfounded and purely fabricated.

During the preliminary investigation proceedings on 21 March 2000, the arresting officers manifested that they are going to submit reply-affidavit on 29 March 2000. However, no such reply-affidavit was submitted.[5]

The Office of the City Prosecutor pointed out that the arresting police officers failed to refute accused-appellant Rolando delos Reyes' counter-allegation that he was not arrested at Shangri-La Plaza in Mandaluyong City, but he was illegally arrested without warrant at Buenas Market in Cainta, Rizal, as corroborated by Marlon David and Joel Navarro (Navarro) in their respective sworn statements (Sinumpaang Salaysay) dated March 14, 2000. The Office of the City Prosecutor also observed that Lantion-Tom was "merely in the company of the other respondents without performing any overt act showing her to be part of the illicit transaction" and her drug test revealed negative results. On the other hand, it considered the conflicting claims of Emmanuel de Claro (i.e., that he was illegally arrested and that the drug deal was a mere fabrication) and the arresting officers (i.e., that Emmanuel de Claro was the seller/pusher in the drug deal and the shabu was seized from his vehicle) would be best ventilated during the trial on the merits.

In accordance with the foregoing resolution, the prosecution filed with the RTC a motion with leave of court to admit amended information.

In its Order[6] dated April 4, 2000, the RTC denied the prosecution's motion. Contrary to the finding of the Office of the City Prosecutor, the RTC adjudged that probable cause exists not only against accused-appellant Reyes and Emmanuel de Claro, but accused-appellant Rolando delos Reyes as well.

Accused-appellants were arraigned on May 23, 2000,[7] while Emmanuel de Claro was arraigned on July 12, 2000.[8] All three pleaded not guilty. After the pre-trial conference, trial ensued.

The prosecution presented in evidence the testimonies of Police Officer (PO) 3 Virgilio Santiago,[9] Senior Police

Officer (SPO) 1 Eraldo Lectura,[10] PO3 Angel Yumul,[11] and SPO1 Benjamin David,[12] members of the Regional Mobile Group (RMG) of the Philippine National Police (PNP) National Capital Regional Police Office (NCRPO) who apprehended and/or investigated the case against accused-appellants, Emmanuel de Claro, and Lantion-Tom; and P/Insp. Benjamin Cruto, Jr.[13] (Cruto), the forensic chemist of the PNP Crime Laboratory.

PO3 Santiago was one of the police officers who arrested Emmanuel de Claro and Lantion-Tom on February 17, 2000. He testified that at around 10:30 a.m., their operation chief, Major Arnold Aguilar, received information from a confidential informant regarding an illegal drug deal that would take place between Botong and Mac-Mac at the parking lot of Shangri-La Plaza in Madaluyong City. Botong and Mac-Mac were identified during the investigation as accused-appellants Rolando delos Reyes and Reyes, respectively.

As narrated by PO3 Santiago, a team to bust the illegal drug deal was organized by Major Aguilar, composed of PO3 Santiago himself, SPO1 Lectura, and PO3 Yumul, along with PO3 Elmer Corbe, PO3 Marcelo Arcancia, Jr., PO3 Randy Fuentes, PO3 Dennis Padpad, and PO3 Edwin dela Cruz. At around 1:00 p.m. of the same day, the police team was dispatched, using four vehicles, to the location of the drug deal and upon arrival, they waited for the confidential informant to arrive. When the confidential informant arrived at around 3:30 p.m., he told the police team that the drug deal would possibly take place between 6:00 p.m. and 11:00 p.m., and that the suspects would utilize a red Toyota Corolla with plate number TRP-868 and a white Toyota Corolla with plate number ULF-706. The police team then positioned their cars strategically in such a way that they could see the vehicles coming from St. Francis Street and EDSA.

PO3 Santiago further recounted that at around 10:00 p.m., the suspected vehicles arrived, both stopping along the driveway of Shangri-La Plaza. The drivers of the vehicles alighted and talked to each other. The confidential informant recognized the driver of the white Toyota car as Mac-Mac and the driver of the red Toyota car as Botong. After a few minutes, Botong made a call on his cellular phone and then proceeded inside Whistle Stop Restaurant, leaving Mac-Mac behind. Inside the restaurant, Botong talked to another person, who was identified during the investigation as Emmanuel de Claro alias Cocoy. PO3 Santiago was about three to five meters away. Thereafter, Botong and Cocoy went out of the restaurant and approached a car parked right outside. The person at the back seat of the car, later on identified as Lantion-Tom, handed to Cocoy a white plastic bag containing a box. Cocoy gave the bag to Botong, who, in turn, handed the same bag to Mac-Mac. In the meantime, Cocoy went back inside the restaurant.

PO3 Santiago related that their team leader "sensed" that the drug deal had already been consummated, so the police team immediately effected the arrest of the suspected drug dealers. PO3 Santiago and PO3 Yumul arrested Cocoy and Lantion-Tom, while SPO1 Lectura and the remaining police team members arrested Botong and Mac-Mac. The plastic bag containing the box was seized from Mac-Mac. The arrested suspects were brought to the police office for investigation. The plastic bag, the box, and the 10 heat-sealed sachets of white crystalline substance inside the box, were marked for identification and physical examination at the police office.

According to PO3 Santiago, the physical examination of the contents of each of the 10 heat-sealed sachets yielded positive test results for methamphetamine hydrochloride or shabu. PO3 Santiago then signed a Joint Affidavit of Arrest dated February 18, 2000 together with the other arresting police officers, namely, SPO1 Lectura, PO3 Corbe, PO3 Arcancia, PO3 Fuentes, and PO3 Nelson Gene Javier.

On cross-examination, PO3 Santiago admitted that he did not actually see what was inside the plastic bag and that he did not even see Botong hand over such plastic bag to Mac-Mac. From PO3 Santiago's position, he could not conclude that the suspects were committing an illegal drug deal as he had no prior knowledge of the contents of the plastic bag, and that he and the other arresting officers just relied on the information relayed by the

confidential informant. Also, the police team did not recover any money from the arrested suspects. The confidential informant merely informed the police the following morning that the money for the illegal drugs was already deposited in the bank. The police, however, failed to make further queries from the confidential informant about the bank.

SPO1 Lectura related that their office received a telephone call from a confidential informant about an illegal drug deal involving Cocoy, Botong, and Mac-Mac in the vicinity of Shangri-La Plaza in Mandaluyong City on February 17, 2000. SPO1 Lectura was designated as the leader of the team that will bust said illegal drug deal. After the briefing, SPO1 Lectura's team proceeded to the subject location.

The confidential informant arrived and met SPO1 Lectura's team at around 3:30 p.m. SPO1 Lectura conducted a short briefing then positioned his team strategically within the vicinity. The confidential informant told the police team that the drug deal would take place between 6:00 p.m. and 11:00 p.m. At around 10:00 p.m., the confidential informant identified the suspected drug dealers Botong and Mac-Mac, who were arriving in two cars. After conversing for a moment with Mac-Mac, Botong went inside Whistle Stop Restaurant to talk to Cocoy. Botong and Cocoy then went outside the restaurant and approached another car. Cocoy took a white plastic bag from the car, which he handed to Botong. Thereafter, Cocoy went back inside the restaurant, while "[Botong] proceeded to his car near [Mac-Mac]." SPO1 Lectura was positioned at the other lane of the road, approximately 10 to 15 meters away from the suspects. At that moment, SPO1 Lectura "sensed" that the drug deal had been consummated, so he decided to already arrest the suspects. SPO1 Lectura arrested Mac-Mac, from whom he seized the white plastic bag. PO3 Yumul and PO3 Padpad arrested Botong; and PO3 Santiago apprehended Cocoy. The police team brought the arrested suspects to the police office for investigation.

SPO1 Lectura submitted to SPO1 David the white plastic bag containing a box with 10 heat-sealed plastic sachets inside. In front of SPO1 Lectura, SPO1 David marked the said articles with his initials. After physical and chemical examinations revealed that the contents of the sachets were shabu, SPO1 Lectura signed the Joint Affidavit of Arrest dated February 18, 2000.

During cross-examination, SPO1 Lectura initially denied that Marlon David was with Botong when the latter was arrested, but he later admitted that the police also arrested Marlon David. Marlon David was brought to Camp Bagong Diwa, Taguig, together with the other arrested suspects, for "verification," and was released the following day. SPO1 Lectura also admitted that during the preliminary investigation, he and PO3 Corbe, PO3 Arcancia, and PO3 Javier, answered that it was PO3 Santiago who seized the shabu from Mac-Mac; but SPO1 Lectura explained that what the investigating prosecutor actually asked during preliminary investigation was who saw where the shabu came from and that he signed the minutes of the preliminary investigation without reading the same. SPO1 Lectura maintained that it was he who recovered the shabu from Mac-Mac. Lastly, SPO1 Lectura acknowledged that his team heavily relied on the information given by the confidential informant in identifying the suspects in the illegal drug deal, who were eventually arrested.

PO3 Yumul substantially narrated the same version of events as that of PO3 Santiago and SPO1 Lectura. On February 17, 2000, he was assigned at the Intelligence Investigation Division of the RMG based in Camp Bagong Diwa, Bicutan, Taguig. He was with SPO1 Lectura, PO3 Santiago, PO3 Fuentes, PO3 Padpad, and several other police officers at the vicinity of Shangri-La Plaza in Mandaluyong City, conducting surveillance operation regarding the tipped-off illegal drug deal. He was with SPO1 Lectura and PO3 Padpad in the car parked in front of Shangri-La Plaza, while PO3 Fuentes, PO3 Dela Cruz, and their confidential informant were in another car also parked along the driveway of Shangri-La Plaza. PO3 Santiago, PO3 Arcancia, and PO3 Corbe were in the car stationed in front of Whistle Stop Restaurant. PO3 Yumul could not recall where the other members of the team were located.

At around 10:00 p.m., the suspects Botong and Mac-Mac arrived in separate cars, stopping in front of Shangri-La Plaza. Botong and Mac-Mac alighted from their cars and talked to each other. At that time, PO3 Yumul was about five meters away from the two suspects. Moments later, Botong called someone on his cellular phone, and then went inside Whistle Stop Restaurant, leaving Mac-Mac behind. PO3 Yumul followed Botong inside the restaurant and saw the latter talking to Cocoy. PO3 Yumul though did not hear the conversation between Botong and Cocoy. Afterwards, Botong and Cocoy went out of the restaurant and approached a parked car. From his position about three meters away, PO3 Yumul saw the passenger at the back seat of the car, Lantion-Tom, opening the window and handing over "a white plastic bag with carton inside" to Cocoy, who, in turn, gave the plastic bag to Botong. Cocoy then returned inside the restaurant and "[Botong] went back to [Mac-Mac]." PO3 Yumul followed Cocoy inside the restaurant. A few minutes later, PO3 Santiago also went inside the restaurant informing PO3 Yumul that they would be arresting Cocoy, and that Botong and Mac-Mac were already arrested outside the restaurant. PO3 Santiago, assisted by PO3 Yumul, approached Cocoy and arrested him. The police team proceeded to the police office with all the arrested suspects for further investigation. PO3 Yumul, however, failed to join the other arresting officers in signing the Joint Affidavit of Arrest dated February 18, 2000.

SPO1 David was an investigator at the Intelligence and Investigation Section of the RMG at Camp Bagong Diwa, Bicutan, Taguig, assigned to the instant case following the arrests of accused-appellants, Emmanuel de Claro and Lantion-Tom. He also referred the case for inquest to the Office of the City Prosecutor.

SPO1 David testified that on February 17, 2000, he received from SPO1 Lectura a plastic bag containing a box with 10 heat-sealed sachets of suspected shabu inside. SPO1 Lectura told SPO1 David that the articles were seized from the suspected drug dealers. SPO1 David marked his initials "BSD" on the confiscated articles, then prepared a request to the PNP Crime Laboratory for examination of the specimens. SPO1 David disclosed that he prepared the Affidavit of Arrest of the arresting officers.

The last witness for the prosecution was P/Insp. Cruto of the PNP Crime Laboratory. P/Insp. Cruto was the forensic chemist who conducted the physical, chemical, and confirmatory examinations of the contents of the 10 heat-sealed plastic sachets submitted by the RMG-NCRPO on February 18, 2000.

P/Insp. Cruto conducted the physical examination by weighing the contents of each sachet, revealing that two sachets weighed 99.6 grams each; two sachets, 99.5 grams each; one sachet, 99.2 grams; two sachets, 98.4 grams each; one sachet, 98.3 grams; one sachet, 94.9 grams; and one sachet, 93.5 grams. P/Insp. Cruto then took a representative sample from each plastic sachet and proceeded with his chemical and confirmatory examinations. The contents of the 10 heat-sealed plastic sachets all tested positive for methamphetamine hydrochloride, otherwise known as shabu. P/Insp. Cruto recorded the result of the examinations in his Physical Sciences Report No. D-097-2000.[14]

The prosecution submitted the following object and documentary evidence: the Joint Affidavit of Arrest[15] dated February 18, 2000 signed by SPO1 Lectura, PO3 Santiago, PO3 Corbe, PO3 Arcancia, PO3 Dela Cruz and PO3 Javier; the Sketch prepared in open court by SPO1 Lectura;[16] the 10 heat-sealed plastic sachets recovered from the possession of accused-appellants;[17] the PNP-RMG Request for Laboratory Examination of the contents of the 10 heat-sealed plastic sachets;[18] the PNP Crime Laboratory Physical Sciences Report No. D-097-2000 dated February 18, 2000 which revealed that the contents of the 10 heat-sealed plastic sachets positively tested for methamphetamine hydrochloride;[19] and the Letter (Referral of the case to the Office of the City Prosecutor)[20] dated February 18, 2000. The RTC admitted all the aforementioned evidence for the prosecution in its Order[21] dated March 1, 2001.

The defense, on the other hand, presented the testimonies of Marlon David,[22] accused-appellant Rolando delos

Reyes,[23] Emmanuel de Claro,[24] Roberto de Claro,[25] and Mary Jane Lantion-Tom.[26] Accused-appellant Reyes did not testify.

Marlon David was 17 years old and a fourth year high school student of Rizal High School in Pasig City. He recalled that on February 17, 2000, at about 1:00 p.m., he accompanied accused-appellant Rolando delos Reyes, whom he referred to as Kuya Botong, to the Buenas Market in Cainta, Rizal, to collect some money.

While accused-appellant Rolando delos Reyes and Marlon David were inside their car at the parking area of said market, another car suddenly arrived, from which an armed male passenger alighted and approached them. Four other armed men followed and poked their guns at accused-appellant Rolando delos Reyes and Marlon David. The armed men, in civilian attire, were carrying an SM plastic shopping bag and questioned accused-appellant Rolando delos Reyes if he knew the owner of said plastic bag. Accused-appellant Rolando delos Reyes denied any knowledge about the plastic bag. Marlon David was also asked and he answered that he knew nothing about the plastic bag.

Thereafter, the armed men, who later introduced themselves as police officers, pulled accused-appellant Rolando delos Reyes from the driver seat of the latter's car, transferred him and Marlon David to the back seat of said car, and blindfolded both of them. Two of the armed men sat in the front seats of the car, while one of them sat at the back, beside accused-appellant Rolando delos Reyes and Marlon David. The armed men drove the car around (paikot-ikot). The armed men then separated accused-appellant Rolando delos Reyes from Marlon David. They ordered Marlon David to alight from the car and transfer to another vehicle. While in the other car, the armed men boxed and mauled Marlon David to force him to admit to be the source of the plastic bag. Each question was accompanied with one punch. Marlon David remained blindfolded until they arrived at the police camp in Bicutan, Taguig, where he again saw accused-appellant Rolando delos Reyes. Marlon David was released the following morning, leaving accused-appellant Rolando delos Reyes behind at the police camp. Marlon David went home and told Virginia delos Reyes, the wife of accused-appellant Rolando delos Reyes, about the incident.

Marlon David, during his cross examination, denied knowing any person with the name Mac-Mac. Marlon David additionally relayed that he was told by accused-appellant Rolando delos Reyes that the latter was likewise mauled by the armed men.

Accused-appellant Rolando delos Reyes or Botong gave a similar account of the incident that took place at 1:00 p.m. on February 17, 2000, while he and Marlon David were at the Buenas Market in Cainta, Rizal. Their car was surrounded by four armed men. The armed men poked their guns at him and Marlon David, shouting at them to open the car doors. He lowered the car window and the armed men opened the car door. The armed men forced him and Marlon David to get down from the front seats of the car and to transfer to the back seat, blindfolded them, and asked them who were the owners of the SM plastic bag. After they left Buenas Market, he noticed that they were just driving around. The car stopped only when Marlon David was taken out and transferred to another car. It was already late in the evening when the car finally stopped. He then realized, after his blindfold had been removed, that he was at Camp Bagong Diwa in Bicutan, Taguig.

Accused-appellant Rolando delos Reyes denied the accusation of the police that he was selling or delivering shabu to anyone. He asserted that he was not arrested at Whistle Stop restaurant in Mandaluyong City, rather, he was illegally arrested at Buenas Market in Cainta, Rizal. Accused-appellant Reyes or Mac-Mac was his friend who owed him money. He and accused-appellant Reyes agreed to meet at Buenas Market for the settlement of the latter's loan, but the meeting did not take place because the armed men arrived. He further claimed that he only met Emmanuel de Claro at Camp Bagong Diwa in Bicutan, Taguig. He never knew Emmanuel de Claro before that time, and he found out the latter's name only when they were already detained at the Mandaluyong City Jail.

Emmanuel de Claro or Cocoy testified that on February 17, 2000 at around 10:00 a.m., he was at the Department of Trade and Industry in Buendia, Makati City, with his common-law wife Mary Jane Lantion-Tom to follow up their application for business permit. At around 1:00 p.m., they had lunch at Glorietta. Emmanuel de Claro was no longer feeling well so he and Lantion-Tom passed by the house of his brother Roberto de Claro to request the latter to drive for them. James, Roberto de Claro's friend, also went with them.

The vehicle driven by Emmanuel de Claro was a rented car because his own car was in the auto shop. Emmanuel de Claro, Lantion-Tom, Roberto de Claro, and James first went to Las Piñas City to check on Emmanuel de Claro's car at the auto shop. From there, they proceeded to Libertad in Pasay City and ate dinner at the Duty Free Philippines. Afterwards, the group made their way to Mandaluyong City where Lantion-Tom had a scheduled appointment with Daisy Milan (Milan), her accountant. Emmanuel de Claro and Lantion-Tom met Milan at Whistle Stop Restaurant located at Shangri-La Plaza in Mandaluyong City. Milan and Lantion-Tom discussed matters pertaining to the business permit. Emmanuel de Claro stepped outside the restaurant for a moment to smoke a cigarette, then, returned inside to wait for the meeting between Lantion-Tom and Milan to finish. After their meeting, Lantion-Tom walked Milan outside the restaurant, while Emmanuel de Claro waited for Lantion-Tom inside.

Three male persons suddenly approached Emmanuel de Claro and introduced themselves as police officers. They warned Emmanuel de Claro not to make a scene and just go with them peacefully. Emmanuel de Claro obeyed. He was brought outside the restaurant and was forced to get into a waiting car. For about three hours inside the car, he was punched, handcuffed, blindfolded, and told to bow down his head. He was likewise being forced to admit something about the shabu, but he denied knowing anything about it. He heard from the radio inside the car that the police officers were waiting for another car. After three hours of traveling, the car finally stopped and when his blindfold was removed, he learned that they were already at Camp Bagong Diwa in Bicutan, Taguig.

Emmanuel de Claro was placed in one room where he stayed for almost an hour, until he was called into another room where he met his co-accused for the first time. He later saw Lantion-Tom at the office of one of the police officers. They were interrogated by the police and being forced to admit that the drugs being shown to them belonged to them. They asked for a lawyer but their plea was ignored. The police told Emmanuel de Claro and Lantion-Tom that somebody should be held responsible for the shabu so they were made to choose whether both of them or only one of them would be charged. Emmanuel de Claro was compelled to choose the latter option.

Roberto de Claro corroborated Emmanuel de Claro's testimony. On February 17, 2000, Roberto de Claro was at home playing video games when his brother Emmanuel de Claro and the latter's wife, Lantion-Tom, arrived and requested him to drive their car because Emmanuel was not feeling well. James, Roberto de Claro's friend, rode with them. They first went to Las Piñas City to check on Emmanuel de Claro's car at the auto shop, then they proceeded to Libertad, Pasay City, where they had dinner at Duty Free Philippines. They next drove to Whistle Stop Restaurant at Shangri-La Plaza in Mandaluyong City to meet "Ms. Milan." Only Emmanuel de Claro and Lantion-Tom went inside the restaurant. Roberto de Claro and James stayed in the car.

Two hours later, Roberto de Claro saw Lantion-Tom and "Ms. Milan" walking towards them. As the two women were approaching, armed men suddenly appeared, surrounded their car, and pointed guns at them. Roberto de Claro got terrified. It was as if an armed robbery ("hold-up") was taking place. The armed men knocked at the car window. Out of fear, Roberto de Claro opened the window, then the door of the car. Roberto de Claro, James, and Lantion-Tom were made to sit at the back seat of the car. Two of the armed men sat on the front seats of the car, while one sat at the back with Roberto de Claro, James, and Lantion-Tom. The armed men introduced themselves as police officers.

Inside the car, the police officers mauled (siniko, sinuntok sa ulo) Roberto de Claro, James, and Lantion-Tom, all the while ordering them to keep their heads bowed down. The police officers drove the car for two hours, stopping at a gas station for about five minutes. At this moment, Roberto de Claro was able to raise his head but was immediately told to bow down his head again. Roberto de Claro also heard from the police officers' radio that they were still waiting for somebody. They travelled again for quite a long time and stopped in a dark place. The police officers took Roberto de Claro's wallet containing P7,000.00 cash. Early in the following morning, they arrived at the police station where Roberto de Claro saw his brother Emmanuel de Claro once more. They stayed in one room until Roberto de Claro and James were released by the police the next day.

When Lantion-Tom was called to testify, the prosecution and the defense agreed to consider her Counter Affidavit dated March 23, 2000 and Supplemental Affidavit dated March 29, 2000 as her direct examination.

On cross-examination, Lantion-Tom confirmed that she was among those arrested on February 17, 2000 at the vicinity of Shangri-La Plaza in Mandaluyong City for her alleged involvement in an illegal drug deal. At the time of the arrest, she was with Emmanuel de Claro, Roberto de Claro, and James. She was also brought to Camp Bagong Diwa in Taguig where she was interrogated without a lawyer. She was shown a box containing shabu which she had never seen before. Lantion-Tom insisted that she was in Mandaluyong City to meet her accountant, Milan, regarding her application for a business permit. Lantion-Tom pointed out that the charge against her was eventually dismissed.

The documentary evidence for the defense consisted of Emmanuel de Claro's Counter Affidavit dated March 23, 2000,[27] Lantion-Tom's Counter Affidavit dated March 23, 2000,[28] Emmanuel de Claro and Lantion-Tom's Supplemental Affidavit dated March 29, 2000,[29] Roberto de Claro's Witness Affidavit dated March 29, 2000,[30] Marlon David's Sinumpaang Salaysay dated March 14, 2000,[31] Virginia delos Reyes' Sinumpaang Salaysay dated March 14, 2000,[32] Navarro's Sinumpaang Salaysay dated March 14, 2000,[33] accused-appellant Rolando delos Reyes' Sinumpaang Kontra Salaysay dated March 14, 2000,[34] and a Barangay Blotter dated February 19, 2000 by Virginia delos Reyes.[35] The RTC admitted all these documentary evidence for the defense in its Order[36] dated September 13, 2002.

In its Decision dated September 23, 2003, the RTC found accused-appellants and Emmanuel de Claro guilty beyond reasonable doubt of the crime charged, and decreed:

WHEREFORE, the prosecution having successfully proved the guilt of the accused beyond reasonable doubt for unlawfully possessing/selling, delivering, transporting and distributing methamphetamine hydrochloride otherwise known as shabu, a regulated drug, without lawful authority in violation of Sections 15 and 16 of Article III in relation to Section 21 of Article IV of R.A. No. 6425, as amended, they are hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of P20,000.00 each and the costs of suit.

Further, all the methamphetamine hydrochloride (shabu) taken and seized from the accused during the aforesaid operation are forfeited and confiscated in favor of the government shall be turned over to the PDEA pursuant to law for proper disposal without delay.[37]

Emmanuel de Claro filed his notice of appeal[38] on October 23, 2003. Accused-appellants Roberto delos Reyes and Reyes each filed his notice of appeal[39] on October 29, 2003 and December 30, 2003, respectively.

Emmanuel de Claro, however, subsequently moved to withdraw his notice of appeal,[40] instead, filing before the RTC an Omnibus Motion for Reconsideration and to Re-Open Proceedings Pursuant [to] Section 24, Rule 119 of the Rules of Court[41] on October 30, 2003, and a Supplemental Motion for Reconsideration[42] on November 3, 2003. Emmanuel de Claro asked the RTC to review its judgment of conviction based on the following grounds:

- THE HONORABLE COURT GRAVELY ERRED IN RULING THAT THE ACCUSED DEFENSE OF

FRAME-UP IS A MERE ALIBI AND HAS THUS ERRED IN ADOPTING THE THEORY OF THE PROSECUTION THAT ALL THE THREE (3) ACCUSED WERE PICKED-UP AT THE VICINITY OF EDSA SHANGRI-LA PLAZA HOTEL.

- THAT THE HONORABLE COURT GRAVELY ERRED IN RULING THAT THE WARRANTLESS ARREST WAS LAWFUL SINCE THE ACCUSED WERE CAUGHT IN FLAGRANTE DELICTO.

- THE HONORABLE COURT GRAVELY ERRED IN FINDING THAT THERE WAS CONSPIRACY AMONG THE THREE (3) ACCUSED IN THE ALLEGED COMMISSION OF THE CRIME OF UNLAWFUL SALE, DELIVERY AND TRANSPORTATION OF THE PROHIBITED DRUG.

- THE HONORABLE COURT GRAVELY ERRED IN FINDING BOTH ACCUSED GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED IN THE INFORMATION ON THE BASIS MAINLY OF A DISPUTABLE PRESUMPTION OF LACK OF IMPROPER MOTIVE ON THE PART OF THE POLICE OFFICERS.

- THAT THE HONORABLE COURT GRAVELY ERRED IN ITS FAILURE TO CONSIDER THE FACT THAT ACCUSED EMMANUEL DE CLARO WAS NOT AFFORDED HIS CONSTITUTIONAL RIGHTS DURING CUSTODIAL INVESTIGATION.[43]

Emmanuel de Claro principally contended that the accusation that he was engaging in an illegal drug deal, levied against him by prosecution witnesses SPO1 Lectura, PO3 Santiago, and PO3 Yumul was suspicious, if not incredible. Emmanuel de Claro pointed out that although these police officers testified that Lantion-Tom, from the car, handed to him the plastic bag containing the box with sachets of shabu, the prosecution still dropped the criminal charges against Lantion-Tom. Emmanuel de Claro also strongly argued that the prosecution failed to contradict his well-supported alibi that he, his wife, and his brother went to Shangri-La Plaza in Mandaluyong City to meet his wife's accountant, so they could attend to several documents pertaining to a business permit. Emmanuel de Claro further insisted that the RTC should have highly regarded accused-appellant Rolando delos Reyes' testimony which directly contradicted the police officers' statements.

In its Order[44] dated November 11, 2003, the RTC granted Emmanuel de Claro's motion to withdraw his notice of appeal and required the prosecution to comment to his motions for reconsideration.

The prosecution filed its Comment/Opposition[45] on December 19, 2003, objecting to Emmanuel de Claro's motions for reconsideration and maintaining that its police-witnesses' categorical, consistent, and straight-forward testimonies were sufficient to convict Emmanuel de Claro.

In a complete turnabout from its previous findings and conclusion, the RTC, in its Order[46] dated January 12, 2004, acquitted Emmanuel de Claro of the crime charged. The RTC explicitly admitted that it erred in giving full faith and credit to the testimonies of prosecution witnesses SPO1 Lectura, PO3 Santiago, and PO3 Yumul, and in entirely rejecting the alibi of the defense. Thus, the RTC disposed:

WHEREFORE, the motion of accused-movant Emmanuel De Claro is hereby GRANTED and a new one entered, ACQUITTING him of the crime charged. Consequently, his immediate release from detention is hereby ordered unless he is detained for other cause or causes.[47]

Nevertheless, in view of the pending notices of appeal of accused-appellants, the RTC forwarded the complete records of the case to us on March 29, 2004, and we gave due course to the said appeals in our Resolution[48] dated June 21, 2004.

Accused-appellant Rolando delos Reyes filed his Appellant's Brief[49] on September 15, 2004, while accused-appellant Reyes filed his Appellant's Brief[50] on November 26, 2004. Pursuant to our pronouncement in

People v. Mateo,[51] we transferred the case to the Court of Appeals for appropriate action and disposition.[52] Accordingly, the plaintiff-appellee, represented by the Office of the Solicitor General (OSG), filed before the appellate court its Consolidated Brief[53] on January 21, 2005.

The Court of Appeals, in its Decision dated July 12, 2006, sustained the conviction of accused-appellants, and merely modified the penalty imposed upon them, from life imprisonment to reclusion perpetua. According to the appellate court, the police officers' testimonies deserve credence than accused-appellants' defenses of denial and alibi, there being no evidence to rebut the presumption that the police officers regularly performed their official duties.

The case was then elevated to us for final review. In our Resolution[54] dated January 31, 2007, we required the parties to submit their supplemental briefs. Plaintiff-appellee and accused-appellants Rolando delos Reyes and Reyes filed their manifestations[55] on March 14, 2007, April 10, 2007, and April 13, 2007, respectively, opting to stand by the briefs they had already filed before the Court of Appeals.

In his Appellant's Brief, accused-appellant Rolando delos Reyes assigned the following errors of the RTC:

- THE COURT A QUO ERRED IN FAILING TO RESOLVE THE CONTRADICTIONARY TESTIMONY AS TO THE PLACE OF THE ARREST IN FAVOR OF THE ACCUSED.
- THE COURT A QUO ERRED IN FINDING [THE] TESTIMONIES OF PO3 VIRGILIO SANTIAGO CREDIBLE.
- THE COURT A QUO ERRED IN FAILING TO APPRECIATE THE PROSECUTION'S EVIDENCE WHICH WAS PREVIOUSLY CATEGORIZE[D] AS WEAK WHEN THE COURT A QUO GRANTED BAIL TO THE ACCUSED.[56]

Accused-appellant Reyes cited these errors in his Appellant's Brief:

- THE TRIAL COURT ERRED IN NOT FINDING THE WARRANTLESS ARREST OF ACCUSED-APPELLANT RAYMUNDO REYES AS UNLAWFUL.
- ASSUMING ARGUENDO THAT THE WARRANTLESS ARREST WAS VALID, ACCUSED-APPELLANT RAYMUNDO REYES CANNOT BE CONVICTED FOR VIOLATION OF R.A. 6425.[57]

Accused-appellants essentially assert that the charge of illegal drug deal lodged against them by the police is a complete fabrication and frame-up. Accused-appellants called attention to the material inconsistencies in the prosecution's evidence. PO3 Santiago testified during direct examination that accused-appellant Rolando delos Reyes handed the "plastic bag with box inside" to accused-appellant Reyes, but he admitted during cross-examination that he did not see such transfer. The prosecution was unable to present any evidence to prove the source of the plastic bag containing the box with sachets of shabu, and the money paid as consideration for the illegal drugs. The prosecution likewise failed to rebut accused-appellant Rolando delos Reyes' straightforward, coherent, and truthful narration, corroborated by Marlon David, that he was illegally arrested at Buenas Market in Cainta, Rizal, and not at Shangri-la Plaza in Mandaluyong City.

Accused-appellants additionally argued that even the prosecution's version of the arrests of the suspects and seizure of the shabu shows that the same were effected in violation of accused-appellants' fundamental rights. The arrests were executed without any warrant or any of the exceptional circumstances to justify a warrantless arrest. The suspects, including accused-appellants, were arrested without warrants based on a mere tip from a confidential informant and not because of any apparent criminal activity. A tip does not constitute probable cause for a warrantless arrest or search and seizure incidental thereto. Thus, the shabu allegedly seized from

accused-appellants is inadmissible in evidence.

Plaintiff-appellee, on the other hand, stand by the convictions of accused-appellants, maintaining that:

- THE POSITIVE AND CREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES HAVE ESTABLISHED THE GUILT OF APPELLANTS BEYOND REASONABLE DOUBT.
- THE WARRANTLESS ARREST CONDUCTED BY THE POLICE IS VALID SINCE IT FALLS SQUARELY UNDER RULE 113, SECTION 5(A) OF THE REVISED RULES ON CRIMINAL PROCEDURE.
- THE EVIDENCE PRESENTED BY THE PROSECUTION MORE THAN SUFFICE TO CONVICT APPELLANTS OF THE CRIME CHARGED.
- CONSPIRACY ATTENDED THE COMMISSION OF THE OFFENSE.
- MERE DENIAL AND "HULIDAP," WITHOUT MORE, CANNOT EXCULPATE APPELLANTS FROM CRIMINAL LIABILITY.
- THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY UNDER SECTION 3(M) OF RULE 131 OF THE REVISED RULES OF COURT HAD NOT BEEN OVERCOME BY DEFENSE EVIDENCE.
- CONCLUSION OF THE TRIAL JUDGE REGARDING THE CREDIBILITY OF WITNESSES COMMANDS GREAT RESPECT AND CONSIDERATION.[58]

Plaintiff-appellee avers that the inconsistencies in the police officers' statements, as pointed out by accused-appellants, are trivial and do not affect the weight of their testimonies; while accused-appellants' defenses of denial and frame-up could be easily concocted and, thus, should be looked upon with disfavor. Moreover, there is no need for proof of consideration for the illegal drug deal, since consideration is not an element of the crime charged.

Plaintiff-appellee avows that accused-appellants were caught while in the commission of a crime or in flagrante delicto, which justifies their warrantless arrests under Section 5(a), Rule 113 of the Rules of Court. Accused-appellants were arrested while in possession and in the act of distributing, without legal authority, a total of 980.9 grams of methamphetamine hydrochloride or shabu, on the night of February 17, 2000 at the parking area of Shangri-La Plaza in Mandaluyong City. In addition, in the absence of satisfactory proof to the contrary, the warrantless arrests executed by the police officers enjoy the presumption that "official duty has been regularly performed."

We grant the appeal and reverse the assailed decision of the Court of Appeals.

At the outset, we observe that the prosecutors and the RTC both displayed uncertainty as to the facts surrounding accused-appellants' arrest on the night of February 17, 2000.

The Office of the City Prosecutor of Mandaluyong City, after preliminary investigation and reinvestigation, recommended that the RTC drop accused-appellant Rolando delos Reyes and Lantion-Tom from the criminal charge. The RTC only partially adopted the recommendations of the Office of the City Prosecutor: dropping the criminal charge against Lantion-Tom, but still finding probable cause against accused-appellant Rolando delos Reyes.[59]

Even after trial, the RTC wavered in its findings and conclusion. In its Decision[60] dated September 23, 2003, the RTC initially convicted accused-appellants and Emmanuel de Claro, but acting on Emmanuel de Claro's

motions for reconsideration, said trial court, in its Order[61] dated January 12, 2004, totally reversed itself and acquitted Emmanuel de Claro. This time, the RTC gave more weight to the evidence presented by the defense.

The Court of Appeals, on appeal, refused to consider the subsequent acquittal of Emmanuel de Claro by the RTC. Instead, the appellate court upheld the earlier ruling of the RTC giving absolute credence to the testimonies of the prosecution witnesses and convicted accused-appellants of the crime charged. Despite the varying judgments of the RTC, the Court of Appeals speciously ratiocinated in its assailed decision that "when the issue involves the credibility of a witness, the trial court's assessment is entitled to great weight." [62]

Guided by the settled rule that "where the inculpatory facts admit of several interpretations, one consistent with accused's innocence and another with his guilt, the evidence thus adduced fail[ed] to meet the test of moral certainty," [63] we find that the findings and conclusion of the RTC in its subsequent Order[64] dated January 12, 2004 (in which it acquitted Emmanuel de Claro) is more in keeping with the evidence on record in this case. It bears to stress that the very same evidence were presented against Emmanuel de Claro and accused-appellants; if the evidence is insufficient to convict the former, then it is also insufficient to convict the latter.

Indeed, the testimonies of prosecution witnesses SPO1 Lectura, PO3 Santiago, and PO3 Yumul are unreliable and suspiciously fabricated. In its Order dated January 12, 2004, the RTC correctly observed that:

Viewed vis-à-vis the peculiar factual milieu of this case, not to say the insistence by the accused-movant [Emmanuel de Claro] that a reevaluation or reassessment of the evidence by the prosecution be considered, this court has decided to revisit the evidence put forward by the prosecution through the crucible of a severe testing by taking a more than casual consideration of every circumstance of the case.

It is noted that the testimony given by the witnesses for the prosecution and that of the defense are diametrically opposed to each other. While this court had already made its conclusion that the testimonies of prosecution witnesses PO3 Santiago, SPO1 Lectura and PO3 Yumul are given full faith and credit and reject the frame-up and alibi story of the accused-movant [Emmanuel de Claro], nonetheless, upon reassessment of the same it appears that the court erred.

In sum, the conveniently dovetailing accounts of the prosecution eyewitnesses, all of them police officers, with regard to the material facts of how the crime was allegedly committed engenders doubt as to their credibility. Firstly, the court noted that these police officers gave identical testimonies of the events that happened from the moment they arrived at 2 o'clock in the afternoon until the arrest of the accused at 10:30 o'clock in the evening at the EDSA Shangri-La premises. This uniform account given by these witnesses cannot but generate the suspicion that the material circumstances testified to by them were integral parts of a well thought-out and prefabricated story. Because of the close camaraderie of these witnesses who belong to the same police force it is not difficult for them to make the same story. Furthermore, their testimonies are so general which shows only too clearly that they testified uniformly only as to material facts but have not given the particulars and the details having relation with the principal facts. While they testified that they were at Shangri-La from 2 in the afternoon to 10 in the evening, they were not able to tell the court how their group positioned strategically at the premises without being noticed by their target. They could not also gave (sic) an explanation how their confidential informant was able to obtain information regarding the drug deal that was supposed to take place on that date involving several personalities. Except for their bare allegation that they have that information regarding the drug deal they were not able to present any proof of such report, say, entry in their logbook of such confidential report and a spot report. Even their operation is not recorded as no documentary evidence was presented. Worth remembering in this regard is *People v. Alviar*, 59 SCRA 136, where it is said that: . . . "[i]t often happens with fabricated stories that minute particulars have not been thought of." It has also been said that "an honest witness, who has sufficient memory to state one fact, and that fact a material one, cannot be safely relied upon as such weakness of memory not only leaves the case incomplete, but throws doubt upon the accuracy of the statements made. Such a witness may be honest, but his testimony is not reliable." [65]

(Emphasis supplied.)

There are also material inconsistencies between the police-witnesses' sworn statements following accused-appellants' arrest and their testimonies before the RTC. The police officers attested in their Joint Affidavit of Arrest dated February 18, 2000 that "upon sensing suspicious transactions being undertaken thereat, team leader thru hand signaled immediately accosted the suspects and introduced themselves as `Police Officers' and after that, subject persons deliberately admitted that they have in their possession illegal drugs and thereafter showed the same to the herein undersigned arresting officers thus they were placed under arrest." [66] Yet, during trial before the RTC, the police officers uniformly testified that they brought accused-appellants, Emmanuel de Claro and Lantion-Tom to the police office after arresting the four suspects in flagrante delicto, without mention at all of the suspects' purported admission.

We also consider the fact that Lantion-Tom was never charged with any criminal involvement even when, according to the prosecution's version of events, she was the first person to deliver the shabu. This seriously dents the prosecution's sequence of events on the night of February 17, 2000.

In contrast, accused-appellants presented clear and convincing evidence in support of their defenses, which the prosecution failed to rebut. Specifically, accused-appellant Rolando delos Reyes testified that he was illegally arrested without warrant at Buenas Market, Cainta, Rizal, not at Shangri-La Plaza in Mandaluyong City; and that he and Marlon David were coerced to incriminate themselves for possession of shabu. His claims were corroborated by Marlon David's testimony and Navarro's Sinumpaang Salaysay dated March 14, 2000. Also, Emmanuel de Claro, Lantion-Tom, and Roberto de Claro consistently testified that they were at Shangri-La Plaza to meet Milan, Lantion-Tom's accountant, regarding documents for a business permit (photocopies of the said documents were presented during trial); and that they were illegally arrested without warrant and forced to admit criminal liability for possession of shabu. These pieces of evidence are overwhelmingly adequate to overthrow the presumption of regularity in the performance by the arresting police officers of their official duties and raise reasonable doubt in accused-appellants' favor.

Furthermore, even assuming that the prosecution's version of the events that took place on the night of February 17, 2000 were true, it still failed to establish probable cause to justify the in flagrante delicto arrests of accused-appellants and search of accused-appellants' persons, incidental to their arrests, resulting in the seizure of the shabu in accused-appellants' possession.

Section 2, Article III of the Constitution provides:

Section 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.

Complementary to the above provision is the exclusionary rule enshrined in Section 3, paragraph 2 of Article III of the Constitution, which solidifies the protection against unreasonable searches and seizures, thus:

Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding. (Emphases supplied.)

The foregoing constitutional proscription is not without exceptions. Search and seizure may be made without a

warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incident to a lawful arrest; (2) search of a moving motor vehicle; (3) search in violation of customs laws; (4) seizure of evidence in plain view; (5) when the accused himself waives his right against unreasonable searches and seizures; and (6) stop and frisk situations.[67]

The first exception (search incidental to a lawful arrest) includes a valid warrantless search and seizure pursuant to an equally valid warrantless arrest which must precede the search. In this instance, the law requires that there be first a lawful arrest before a search can be made -- the process cannot be reversed. As a rule, an arrest is considered legitimate if effected with a valid warrant of arrest. The Rules of Court, however, recognizes permissible warrantless arrests. Thus, a peace officer or a private person may, without warrant, arrest a person: (a) when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense (arrest in flagrante delicto); (b) when an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it (arrest effected in hot pursuit); and (c) when the person to be arrested is a prisoner who has escaped from a penal establishment or a place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another (arrest of escaped prisoners).[68]

In *People v. Molina*,^[69] we cited several cases involving in flagrante delicto arrests preceding the search and seizure that were held illegal, to wit:

In *People v. Chua Ho San*, the Court held that in cases of in flagrante delicto arrests, a peace officer or a private person may, without a warrant, arrest a person when, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. The arresting officer, therefore, must have personal knowledge of such fact or, as recent case law adverts to, personal knowledge of facts or circumstances convincingly indicative or constitutive of probable cause. As discussed in *People v. Doria*, probable cause means an actual belief or reasonable grounds of suspicion. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense, is based on actual facts, i.e., supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.

As applied to in flagrante delicto arrests, it is settled that "reliable information" alone, absent any overt act indicative of a felonious enterprise in the presence and within the view of the arresting officers, are not sufficient to constitute probable cause that would justify an in flagrante delicto arrest. Thus, in *People v. Aminnudin*, it was held that "the accused-appellant was not, at the moment of his arrest, committing a crime nor was it shown that he was about to do so or that he had just done so. What he was doing was descending the gangplank of the M/V Wilcon 9 and there was no outward indication that called for his arrest. To all appearances, he was like any of the other passengers innocently disembarking from the vessel. It was only when the informer pointed to him as the carrier of the marijuana that he suddenly became suspect and so subject to apprehension."

Likewise, in *People v. Mengote*, the Court did not consider "eyes . . . darting from side to side . . . [while] holding . . . [one's] abdomen," in a crowded street at 11:30 in the morning, as overt acts and circumstances sufficient to arouse suspicion and indicative of probable cause. According to the Court, "[b]y no stretch of the imagination could it have been inferred from these acts that an offense had just been committed, or was actually being committed, or was at least being attempted in [the arresting officers'] presence." So also, in *People v. Encinada*, the Court ruled that no probable cause is gleanable from the act of riding a motorela while holding two plastic baby chairs.

Then, too, in *Malacat v. Court of Appeals*, the trial court concluded that petitioner was attempting to commit a

crime as he was "'standing at the corner of Plaza Miranda and Quezon Boulevard' with his eyes 'moving very fast' and 'looking at every person that come (sic) nearer (sic) to them.'" In declaring the warrantless arrest therein illegal, the Court said:

Here, there could have been no valid in flagrante delicto ... arrest preceding the search in light of the lack of personal knowledge on the part of Yu, the arresting officer, or an overt physical act, on the part of petitioner, indicating that a crime had just been committed, was being committed or was going to be committed.

It went on to state that --

Second, there was nothing in petitioner's behavior or conduct which could have reasonably elicited even mere suspicion other than that his eyes were "moving very fast" -- an observation which leaves us incredulous since Yu and his teammates were nowhere near petitioner and it was already 6:30 p.m., thus presumably dusk. Petitioner and his companions were merely standing at the corner and were not creating any commotion or trouble . . .

Third, there was at all no ground, probable or otherwise, to believe that petitioner was armed with a deadly weapon. None was visible to Yu, for as he admitted, the alleged grenade was "discovered" "inside the front waistline" of petitioner, and from all indications as to the distance between Yu and petitioner, any telltale bulge, assuming that petitioner was indeed hiding a grenade, could not have been visible to Yu.

Clearly, to constitute a valid in flagrante delicto arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.[70] (Emphases supplied.)

Similar to the above-cited cases in *Molina*, there is a dearth of evidence in this case to justify the in flagrante delicto arrests of accused-appellants and search of their persons incidental to the arrests.

A close examination of the testimonies of SPO1 Lectura, PO3 Santiago, and PO3 Yumul reveal that they simply relied on the information provided by their confidential informant that an illegal drug deal was to take place on the night of February 17, 2000 at Shangri-la Plaza in Mandaluyong City. Without any other independent information, and by simply seeing the suspects pass from one to another a white plastic bag with a box or carton inside, the police team was already able to conclude that the box contained shabu and "sensed" that an illegal drug deal took place.

SPO1 Lectura testified on direct examination as follows:

Q:

What was the information gathered by your informant?

A:

That there will be a drug deal between 6 to 11 in the evening, sir.

Q:

You were there as early as 2:00 p.m.?

A:

Yes, sir.

Q:

What did you do after briefing?

A:

We positioned ourselves strategically, we waited for the arrival of the subject, sir.

x x x x

Q:

When you are already positioned in your respective area at the vicinity of Shangri-La Plaza, what happened next, if any?

A:

At around 10:00 p.m. two (2) cars arrived and they were identified by the informant that they were the personalities involved.

x x x x

Q:

When this two (2) cars arrive what happened next?

A:

They talked for a while after few minutes Botong entered, sir.

x x x x

Q:

Do you know this Botong prior this incident?

A:

No, sir.

Q:

How did you come to know that he is Botong?

A:

Through our informant, sir.

Q:

When Botong went to the Whistle Stop, what happened next?

A:

According to my other companion he talked to another person then after that they went out, sir.

x x x x

Q:

How long did Botong stay in Whistle Stop Restaurant?

A:

One (1) minute, sir.

x x x x

Q:

When you say they who is the companion?

A:

Cocoy, sir.

x x x x

Q:

What happened next after they went out to the car?

A:

They went to another car and Cocoy got something from his car and handed to Botong, sir.

x x x x

Q:

Did you see that something that was taken inside that car?

A:

White plastic bag, sir.

Q:

What happened after that?

A:

Cocoy went inside the Whistle Stop, sir.

Q:

With the bag?

A:

No, it was left with Botong, sir.

Q:

What happened next after that?

A:

Botong proceeded to his car near Mac-Mac, sir.

Q:

What happened next after that?

A:

We already sensed that drug deal has transpired, sir. We accosted him.

x x x x

Q:

What did you do?

A:

I arrested Mac-Mac, sir.

x x x x

Q:

Who of your companion apprehended Botong or Rolando delos Reyes?

A:

Botong was arrested by Yumul and Padpad, sir.

Q:

How about De Claro?

A:

Arrested by Santiago, sir.

x x x x

Q:

Then what did you do after apprehending these people?

A:

We brought them to our office for investigation, sir.[71] (Emphases supplied.)

PO3 Santiago's testimony also did not offer much justification for the warrantless arrest of accused-appellants and search of their persons:

Q:

When these two (2) persons went out of the restaurant and went to the place where blue Mazda car was parked, what happened next?

A:

The person inside the Mazda car, from the backseat, handed a white plastic bag with a box inside to Emmanuel de Claro [Cocoy], sir. Then, Emmanuel de Claro [Cocoy] gave it to Rolando Delos Reyes [Botong], sir.

Q:

You mentioned about somebody handing box to De Claro [Cocoy] from inside that Mazda car?

A:

Yes, sir.

Q:

Who was this somebody handling that box?

A:

It was Mary Jane Lantion, sir.

x x x x

Q:

When you see De Claro [Cocoy] handling the box to Botong, what happened after that?

A:

Botong proceeded to the place of Mac-Mac and Emmanuel De Claro [Cocoy] returned back inside the said restaurant, sir.

Q:

Where was Mac-Mac then at that time?

A:

Near their car, sir. He was waiting for Botong.

Q:

After that what happened next?

A:

When Botong returned to Mac-Mac, he gave white plastic bag with box inside to Mac-Mac, sir.

Q:

What happened after that?

A:

Our team leader, sensing that the drug deal have been consummated, we apprehended them, sir.

Q:

How did you come to know that there was a drug deal at that particular place and time?

A:

Because of the information given to us by the informant, sir.

Q:

Are you aware of the contents of that box at that time?

A:

No, sir.

Q:

How did you come to know that there was a consummation of a drug deal?

A:

Because of the information given to us by the informant that there will be a drug-deal, sir.

X X X X

Q:

Then what did you do?

A:

We brought them to our office for proper investigation, sir.

Q:

At your office, what else did you do?

A:

We confiscated the evidence, marked them and a request for laboratory examination was made and other pertaining papers regarding the arrest of the accused.

Q:

You mentioned about the confiscated evidence. What is that confiscated evidence that you are saying?

A:

Ten (10) pieces of white plastic transparent plastic bag with white crystalline substance suspected to be methamphetamine hydrochloride, sir.

Q:

How were these evidences confiscated by your group?

A:

They were confiscated from Mac-Mac, sir.

Q:

In what condition were they at that time that they were confiscated from Mac-Mac?

A:

They were placed inside the box, sir.[72] (Emphases supplied.)

PO3 Yumul's narration of events was not any different from those of SPO1 Lectura and PO3 Santiago:

Q:

When did you meet the confidential informant?

A:

At the vicinity of EDSA Shangri-La Plaza, sir.

Q:

And what was the information that was relayed to you by the confidential informant?

A:

The identities of the persons, sir.

Q:

What did he particularly tells you in that particular time you meet the confidential informant at the vicinity of EDSA Shangri-La Plaza?

A:

That there will be a drug-deal and the people involved will arrived together with their car, sir.

x x x x

Q:

And what happened after the confidential informant relayed to you the information?

A:

After we were brief by the confidential informant, we strategically positioned ourselves in the place where the drug-deal will occur, sir.

x x x x

Q:

So what did you do after positioning yourselves in that place of EDSA Shangri-La Plaza and Whistle Stop restaurant, what happened next after that?

A:

At around 10:00, one car arrived, a white Toyota corolla . . .

Q:

10:00 what? In the morning or in the evening?

A:

In the evening, sir, of February 17, 2000, sir.

Q:

And you stated that two vehicles arrived?

A:

Yes, sir.

x x x x

Q:

So what happened when this vehicle arrived?

A:

The red Toyota corolla follows, sir.

x x x x

Q:

Then what happened? What did you do, if any?

A:

Our confidential informant told us that, that is our subject, sir.

x x x x

Q:

What happened next, if any, were they alighted from the car?

A:

Yes, sir.

x x x x

Q:

Then, what happened next, if any?

A:

They talked after they alighted from their car, sir.

Q:

When you say "nag-usap sila" to whom are you referring?

A:

To Mac-Mac and Botong, sir.

x x x x

Q:

What happened next after you see them talking to each other?

A:

When they talk Mac-Mac called through cellphone, sir.

Q:

By the way, did you hear the conversation of this two?

A:

No, sir.

x x x x

Q:

How about the one calling over the cellphone, did you hear also what was the subject of their conversation?

A:

No, sir.

Q:

So what happened next after seeing them having a conversation with each other?

A:

Botong immediately walked and proceeding to the Whistle Stop, sir.

x x x x

Q:

Then what happened when Botong went to Whistle Stop?

A:

He talked to somebody inside, sir.

x x x x

Q:

And did you hear what was the subject of their conversation?

A:

No, sir.

Q:

Then what happened next when Botong talked to somebody inside the Whistle Stop?

A:

The companion stood up and they went outside and both of them went to the side of Whistle Stop in front of the blue car, sir.

x x x x

Q:

What did you do then?

A:

Somebody opened the window in back of the blue car, sir.

Q:

And then what happened next, if any?

A:

A white plastic bag was handed to him with carton inside, sir.

x x x x

Q:

And who received that item or article from the car?

A:

Cocoy, sir.

x x x x

Q:

Were you able to know the person inside that car and who handed to Cocoy the white plastic bag?

A:

Yes, sir.

Q:

Who was that person?

A:

Mary Jane Lantion, sir.

x x x x

Q:

And when this white plastic bag with carton placed inside handed to Cocoy, what did you do?

A:

It was first handed by Cocoy to Botong, the plastic bag and then they walked in different direction, Cocoy went back inside the Whistle Stop and then Botong went back to Mac-Mac, sir.

x x x x

Q:

And then what happened next after that?

A:

I followed Cocoy inside the Whistle Stop, sir.

x x x x

Q:

So what did you do then?

A:

I observed him inside but after a few minutes PO3 Virgilio Santiago went inside and told me that we will going to get them, sir.

Q:

Why are you going to get them?

A:

Because the two were already arrested outside the Whistle Stop, Mac-Mac and Botong, sir.

x x x x

Q:

So what did you do when PO3 Santiago told you that?

A:

PO3 Santiago approached Cocoy and I am just assisting him, PO3 Santiago to avoid commotion, sir.

Q:

Then what did you do next after that?

A:

We were able to get Cocoy and we went outside, sir.

Q:

And then what did you do, if any?

A:

After arresting them we boarded to the car and we went to the office, sir.[73] (Emphases supplied.)

Evident from the foregoing excerpts that the police officers arrested accused-appellants and searched the latter's persons without a warrant after seeing Rolando delos Reyes and Emmanuel de Claro momentarily conversing in the restaurant, and witnessing the white plastic bag with a box or carton inside being passed from Lantion-Tom to Emmanuel de Claro, to accused-appellant Rolando delos Reyes, and finally, to accused-appellant Reyes. These circumstances, however, hardly constitute overt acts "indicative of a felonious enterprise." SPO1 Lectura, PO3 Santiago, and PO3 Yumul had no prior knowledge of the suspects' identities, and they completely relied on their confidential informant to actually identify the suspects. None of the police officers actually saw what was inside that box. There is also no evidence that the confidential informant himself knew that the box contained shabu. No effort at all was taken to confirm that the arrested suspects actually knew that the box or carton inside the white plastic bag, seized from their possession, contained shabu. The police officers were unable to establish a cogent fact or circumstance that would have reasonably invited their attention, as officers of the law, to suspect that accused-appellants, Emmanuel de Claro, and Lantion-Tom "has just committed, is actually committing, or is

attempting to commit" a crime, particularly, an illegal drug deal.

Finally, from their own account of the events, the police officers had compromised the integrity of the shabu purportedly seized from accused-appellants.

In *People v. Sy Chua*,^[74] we questioned whether the shabu seized from the accused was the same one presented at the trial because of the failure of the police to mark the drugs at the place where it was taken, to wit:

Furthermore, we entertain doubts whether the items allegedly seized from accused-appellant were the very same items presented at the trial of this case. The record shows that the initial field test where the items seized were identified as shabu, was only conducted at the PNP headquarters of Angeles City. The items were therefore not marked at the place where they were taken. In *People v. Casimiro*, we struck down with disbelief the reliability of the identity of the confiscated items since they were not marked at the place where they were seized, thus:

The narcotics field test, which initially identified the seized item as marijuana, was likewise not conducted at the scene of the crime, but only at the narcotics office. There is thus reasonable doubt as to whether the item allegedly seized from accused-appellant is the same brick of marijuana marked by the policemen in their headquarters and given by them to the crime laboratory.^[75] (Emphases supplied.)

In the instant case, SPO1 Lectura, PO3 Santiago, and PO3 Yumul uniformly testified before the RTC that they brought the arrested suspects to the police office for investigation. SPO1 Lectura and PO3 Santiago were vague as to how they ascertained as shabu the contents of the box inside the white plastic bag, immediately after seizing the same from accused-appellant Reyes and before proceeding to the police office; while PO3 Yumul explicitly testified on cross-examination^[76] that he saw the shabu for the first time at the police office. At any rate, all three police officers recounted that the shabu was marked by SPO1 Benjamin David only at the police office.

Without valid justification for the in flagrante delicto arrests of accused-appellants, the search of accused-appellants' persons incidental to said arrests, and the eventual seizure of the shabu from accused-appellants' possession, are also considered unlawful and, thus, the seized shabu is excluded in evidence as fruit of a poisonous tree. Without the corpus delicti for the crime charged, then the acquittal of accused-appellants is inevitable.

As we aptly held in *People v. Sy Chua*^[77]:

All told, the absence of ill-motive on the part of the arresting team cannot simply validate, much more cure, the illegality of the arrest and consequent warrantless search of accused-appellant. Neither can the presumption of regularity of performance of function be invoked by an officer in aid of the process when he undertakes to justify an encroachment of rights secured by the Constitution. In *People v. Nubla*, we clearly stated that:

The presumption of regularity in the performance of official duty cannot be used as basis for affirming accused-appellant's conviction because, first, the presumption is precisely just that -- a mere presumption. Once challenged by evidence, as in this case, . . . [it] cannot be regarded as binding truth. Second, the presumption of regularity in the performance of official functions cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt.

x x x x

The government's drive against illegal drugs needs the support of every citizen. But it should not undermine the fundamental rights of every citizen as enshrined in the Constitution. The constitutional guarantee against warrantless arrests and unreasonable searches and seizures cannot be so carelessly disregarded as overzealous police officers are sometimes wont to do. Fealty to the constitution and the rights it guarantees should be

paramount in their minds, otherwise their good intentions will remain as such simply because they have blundered. The criminal goes free, if he must, but it is the law that sets him free. Nothing can destroy a government more quickly than its failure to observe its own laws, or worse, its disregard of the charter of its own existence.[78]

WHEREFORE, the Decision dated July 12, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01733 is hereby REVERSED and SET ASIDE. Accused-appellants Rolando delos Reyes and Raymundo Reyes are ACQUITTED on the ground of reasonable doubt and they are ORDERED forthwith released from custody, unless they are being lawfully held for another crime.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 4-13; penned by Associate Justice Elvi John S. Asuncion with Associate Justices Jose C. Mendoza (now a member of this Court) and Arturo G. Tayag, concurring.

[2] CA rollo, pp. 43-53; penned by Judge Edwin D. Sorongon.

[3] Records, Vol. I, p. 1.

[4] Id. at 65.

[5] Id. at 103-109.

[6] Id. at 110.

[7] Id. at 262.

[8] Id. at 349.

[9] TSN, July 12, 2000 and August 23, 2000.

[10] TSN, August 23, 2000.

[11] TSN, December 13, 2000.

[12] TSN, February 21, 2001.

[13] TSN, June 8, 2000.

[14] Records, Vol. II, pp. 659-660.

[15] Id. at 656-658.

[16] Id. at 663.

[17] Exhibits D-2 to D-11.

[18] Records, Vol. II, pp. 661-662.

[19] Id. at 659-660.

[20] Id. at 664-665.

[21] Id. at 652.

[22] TSN, April 25, 2001 and May 23, 2001.

[23] TSN, July 31, 2001 and September 5, 2001.

[24] TSN, December 12, 2001 and March 6, 2002.

[25] TSN, March 13, 2002.

[26] TSN, July 31, 2002.

[27] Records, Vol. II, pp. 888-911.

[28] Id. at 917-920.

[29] Id. at 912-913.

[30] Id. at 914-916.

[31] Id. at 922-923.

[32] Id. at 924-925.

[33] Id. at 926.

[34] Id. at 927-929.

[35] Id. at 930.

[36] Id. at 934.

[37] CA rollo, p. 53.

[38] Records, Vol. III, p. 1083.

[39] Id. at 1095 and 1194.

[40] Id. at 1104-1105.

[41] Id. at 1097-1103.

[42] Id. at 1115-1137.

[43] Id. at 1121-1122.

[44] Id. at 1162.

[45] Id. at 1181-1183.

[46] Id. at 1198-1208.

[47] Id. at 1208.

[48] CA rollo, pp. 69-70.

[49] Id. at 82-100.

[50] Id. at 127-140.

[51] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[52] CA rollo, pp. 160-A and B.

[53] Id. at 179-211.

[54] Rollo, p. 11.

[55] Id. at 16-23.

[56] CA rollo, p. 83.

[57] Id. at 129.

[58] Id. at 184-185.

[59] Records, Vol. I, p. 107.

[60] CA rollo, pp. 43-53.

[61] Id. at 69-70.

[62] Rollo, p. 8.

[63] *People v. Mariano*, 412 Phil. 252, 258 (2001).

[64] Records, Vol. III, pp. 1198-1208.

[65] Id. at 1200-1201.

[66] Records, Vol. II, p. 657.

[67] *People v. Molina*, 404 Phil. 797, 808 (2001).

[68] Id. at 808-809.

[69] Id.

[70] Id. at 809-812.

[71] TSN, August 23, 2000, pp. 31-38.

[72] TSN, July 12, 2000, pp. 15-20.

[73] TSN, December 13, 2000, pp. 6-21.

[74] 444 Phil. 757 (2003).

[75] Id. at 776-777.

[76] Q: This afternoon you are going to tell this court that the first time that you saw Exhibits D-1 to D-10, the alleged shabu, was inside your office, correct?

A: Yes, sir.

Q: You're under oath that the first time you [saw] this was in your office, correct?

A: Yes, sir. (TSN, December 13, 2000, p. 33.)

[77] *Supra* at note 74.

[78] Id. at 776-777.

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