

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGARDO SANTIAGO Y GATDULA, VICENTE SANTIAGO Y GATDULA, AND VLADIMIR AMADO Y SANTIAGO, ACCUSED-APPELLANTS.

G.R. No. 175326. November 28, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01255 dated 29 March 2006,[1] affirming with modification the Decision of the Manila Regional Trial Court (RTC), Branch 18, in Criminal Case No. 99-172427 dated 14 May 2001,[2] finding accused-appellants Edgardo G. Santiago, Vicente G. Santiago, and Vladimir S. Amado guilty of illegal sale of shabu under Section 15, Article III of Republic Act No. 6425, otherwise known as the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659, and imposing upon them the penalty of death.

Gathered from the records are the following facts:

Appellant Edgardo G. Santiago (Edgardo) is the elder brother of appellant Vicente G. Santiago (Vicente) while appellant Vladimir S. Amado (Vladimir) is the nephew of Edgardo and Vicente.

On 22 April 1999, an Information was filed with the RTC against appellants for illegal sale of shabu under Section 15, Article III of Republic Act No. 6425, as amended by Republic Act No. 7659. The accusatory portion of the Information reads:

The undersigned [Asst. City Prosecutor Yvonne G. Corpuz] accuses EDGARDO SANTIAGO Y GATDULA, VICENTE SANTIAGO Y GATDULA and VLADIMIR AMADO Y SANTIAGO of a violation of Section 15, Article III in relation to Section 2 (e), (f), (m), (o) Article I, in relation to Section 21 (b) of Republic Act 6425 as amended by Presidential Decree No. 1683 and as further amended by Republic Act No. 7659, committed as follows:

That on or about April 8, 1999, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping one another, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there willfully, unlawfully and knowingly sell or offer for sale, dispense, deliver, transport or distribute a total of THREE HUNDRED TWELVE POINT TWO GRAMS (312.2 g) of white crystalline substance known as “Shabu” containing methamphetamine hydrochloride, which is a regulated drug.[3]

When arraigned on 13 May 1999, the appellants, assisted by their respective counsels de parte, pleaded “Not Guilty” to the charge.[4] Subsequently, trial on the merits ensued.

The prosecution presented as witnesses Police Inspector Nolasco Cortez (Inspector Cortez), Chief of Cavite Provincial Narcotics Office and Team Leader of the 4[th] Regional Narcotics Office Special Operations Group, and his subordinate, SPO1 Joseph Yatco (SPO1 Yatco). Their testimonies, woven together, bear the following:

On 8 April 1999, at around 10:00 in the evening, an informant approached Inspector Cortez at the latter's Narcotics Office in Imus, Cavite, and reported the drug trafficking activities of appellants in Binondo, Manila. Inspector Cortez instructed the informant to contact the appellants and arrange a transaction between him (Inspector Cortez) and the appellants for the purchase of shabu. The informant called the appellants and told them that an interested buyer wants to procure from them 300 grams of shabu for P300,000.00. Appellants agreed to the transaction. Thereafter, Inspector Cortez formed a team and planned a buy-bust operation. The team agreed that Inspector Cortez would act as the poseur-buyer while SPO1 Yatco, a certain PO3 Wilfredo Luna (PO3 Luna), SPO1 Marcelino Male (SPO1 Male), PO3 Rolando Paternal (PO3 Paternal), PO3 Ben Almojuela (PO3 Almojuela), PO3 Albert Colaler (PO3 Colaler), PO2 Allan Lising (PO2 Lising) and PO1 Aldrin Agravante (PO1 Agravante) would act as back-up during the buy-bust operation. The team also prepared bundles of boodle money appearing to be worth P300,000.00. The monies were marked with the signature of PO3 Paternal.[5]

On 9 April 1999, at about 6:30 in the morning, the team went to the Manila Western Police District Command (WPDC) and coordinated the planned entrapment of appellants. Afterwards, the team proceeded to the residence of the informant at P. Solano Street, Binondo, Manila, arriving thereat at around 8:45 in the morning.[6]

Inspector Cortez and the informant waited for appellants at the second floor of the informant's house while SPO1 Yatco and PO3 Luna positioned themselves outside the house. The rest of the team members stayed within the perimeter of the area. Later, Vladimir arrived and met the informant and Inspector Cortez. The informant told Vladimir that Inspector Cortez was the interested buyer of shabu he referred to in their previous conversation. Vladimir asked Inspector Cortez to show him the money. Inspector Cortez opened the briefcase he was holding and displayed the boodle money. Vladimir then left the two.[7]

After a few minutes, Vladimir returned, this time accompanied by Edgardo and Vicente. Edgardo introduced himself as a barangay kagawad and told Inspector Cortez, "Walang problema sa hulihan dito. Sagot ka namin dito." Vicente also uttered, "Pare dito sa amin maganda ang klase ng aming shabu. Puwede kang bumalik bukas ng hapon o sa kamakalawa para ka makapag-purchase ng another 300 grams of shabu." Edgardo then brought out three transparent plastic bags containing shabu while Vicente brought out a digital weighing scale. The appellants assisted each other in weighing the three plastics bags of shabu. Each of the plastic bags weighed 100 grams. Subsequently, Vladimir handed the three plastic bags of shabu to Inspector Cortez, while the latter turned over the briefcase containing the boodle money to the former. Inspector Cortez then wiped his face with a handkerchief as pre-arranged signal to his back-up team. Thereupon, he drew his service firearm, introduced himself as a narcotics agent, and declared the arrest of appellants. Instead of yielding peacefully, appellants ganged up on Inspector Cortez. Vladimir grappled with Inspector Cortez for the possession of the latter's service firearm while Edgardo and Vicente pushed Inspector Cortez to the wall. At this juncture, SPO1 Yatco and PO3 Luna arrived and subdued the appellants. Thereafter, the rest of the back-up team entered the informant's house and assisted Inspector Cortez, SPO1 Yatco and PO3 Luna. The arresting officers then seized the three plastic bags of shabu, the weighing scale, and the briefcase containing the boodle money.[8]

The three plastic bags of shabu recovered from appellants were submitted to the Philippine National Police (PNP) Crime Laboratory in Camp Vicente Lim, Calamba, Laguna, for laboratory examination. PNP Forensic Chemist Lorna Tria (PNP Forensic Chemist Tria) found the contents of the three plastic bags to be positive for methamphetamine hydrochloride or shabu. Upon being weighed, the three plastic bags were found to be containing 104 grams, 104.43 grams, and 103.77 grams of shabu, respectively, or a total of 312.2 grams.[9]

The prosecution also presented documentary and object evidence to buttress the testimonies of its witnesses, to wit: (1) PINAGSAMA-SAMANG SINUMPAANG SALAYSAY of Inspector Cortez, SPO1 Yatco and PO3 Luna dated April 1999;[10] (2) booking sheet and arrest report of appellants;[11] (3) request for physical/medical

examination of appellants addressed to the 4th Regional Narcotics Office, Camp Vicente Lim, Calamba, Laguna;[12] (4) findings on the physical examination of appellants;[13] (5) request for laboratory examination of the three plastic bags of shabu seized from the appellants addressed to the Chief of the Forensic/Chemistry Section;[14] (6) chemistry report signed by PNP Forensic Chemist Tria finding the three plastics bags to be positive for methamphetamine hydrochloride or shabu;[15] (7) the three plastic bags of shabu examined by PNP Forensic Chemist Tria;[16] (8) request for physical/medical examination of Inspector Cortez;[17] (9) the boodle money used in the buy-bust operation and its photocopies;[18] (10) coordination form prepared by Inspector Cortez and received by a certain PO3 Baarde and PO3 Arasis;[19] and (11) letter-referral for inquest proceedings of appellants signed by SPO1 Male and addressed to the Office of the City Prosecutor, Manila.[20]

For its part, the defense proffered the testimonies of the appellants and their corroborating witnesses -- namely, Manuel Quinan (Quinan), Celerino Rubiano (Rubiano), Benjamin Joven (Joven), and Guillermo Miguel Hermoso (Hermoso) -- to refute the foregoing accusations. Their version of the incident is as follows:

On 9 April 1999, at about 8:50 in the morning, Vladimir went to the house of a certain Oscar Colobe (Oscar) at Del Pan, Binondo, Manila, to invite the latter's son named Boy, to play basketball with him. Upon entering the second floor of the house, he saw therein Oscar, the latter's wife, a certain Rey, two men and a lady. Oscar was talking with Rey, the two men and the lady. While waiting for Boy, he saw the two men pull out a gun while Rey ran downstairs. One of the men ran after Rey while the other went to the terrace of the same house and fired his gun. Stunned, he remained motionless. Suddenly, one of the men held his arm and poked a gun at him while the lady held his shoulders. He then shouted to his neighbors, "Tulungan ninyo ako, tawagin nyo ang Kuya Edgar." [21]

Edgardo and Vicente were having a conversation with their neighbors Quinan, Rubiano, Hermoso, and a certain Rolando Ramirez (Ramirez) and Bayani Antiago (Antiago) in front of Edgardo's house at Bagong Pag-asa, Del Pan, Binondo, Manila, when an unidentified person approached Edgardo and told him, "Kuya, si Vladimir babarilin ng mama." [22] Edgardo and Vicente immediately proceeded to the house of Oscar and saw Vladimir wrestling with a man, whom they identified as Inspector Cortez, for the possession of a gun. Edgardo introduced himself as a barangay kagawad and told Inspector Cortez not to make any trouble in their place and that they could peacefully take Vladimir with them. At this point, several policemen arrived and, per order of Inspector Cortez, handcuffed the appellants. Inspector Cortez and his men then inflicted fist blows and poked their guns at appellants. Thereafter, Inspector Cortez and his men brought the appellants to the 4th Regional Narcotics Office, Camp Vicente Lim, Calamba, Laguna. During their stay in the said office, appellants were beaten and threatened by Inspector Cortez and his men. Subsequently, some neighbors of the appellants approached the arresting officers and affirmed that the appellants were not involved in the illegal sale of shabu in their barangay. [23]

In support of the testimonies of its witnesses, the defense adduced as its object and documentary evidence the following: (1) pictures of the house terrace of Oscar; [24] (2) PINAGSANIB NA SALUNGAT NA SALAYSAY of Edgardo and Vicente dated 19 April 1999; [25] (3) manifestation paper signed by the neighbors of appellants stating that Edgardo and Vicente are of good moral character and had no participation in the alleged illegal sale of shabu during the incident; [26] (4) KONTRA-SALAYSAY of Vladimir dated 19 April 1999; [27] (5) SALAYSAY of Joven, Quinan, Rubiano, Hermoso, Ramirez and Antiago; [28] and (6) manifestation paper dated 15 April 1999 signed by the fellow barangay kagawads of Edgardo attesting that the latter is of good moral character and was active in fighting crimes in their place. [29]

After trial, the RTC rendered a Decision dated 14 May 2001, finding appellants guilty of violating Section 15, Article III of Republic Act No. 6425, as amended by Republic Act No. 7659, and imposing upon them the penalty of death. The dispositive portion of the decision reads:

WHEREFORE, the accused, Edgardo Santiago, Vicente Santiago and Vladimir Amado, are hereby convicted of the crime of Violation of Section 15, Article III in relation to Section 21 of Article IV of R.A. 6425 as amended by R.A. 7659, involving 312.2 grams of shabu with the aggravating circumstance of the offense having been committed by an organized/syndicated crime group, and sentenced to suffer the penalty of death by lethal injection and to pay a fine of P500,000.00 each, plus the costs.

The 312.2 grams of shabu is forfeited in favor of the government and is ordered to be turned over to the Dangerous Drugs Board, for proper disposition.[30]

Aggrieved, appellants elevated the instant case directly to this Court for review. However, pursuant to our ruling in *People v. Mateo*,[31] we remanded the case to the Court of Appeals for disposition. On 29 March 2006, the Court of Appeals promulgated its Decision affirming with modification the RTC decision,[32] thus:

WHEREFORE, the May 14, 2001 Decision of the Regional Trial Court of Manila, Branch 18, in Criminal Case No. 99-172427, with respect to the conviction of EDGARDO SANTIAGO Y GATDULA, VICENTE SANTIAGO Y GATDULA and VLADIMIR AMADO Y SANTIAGO is AFFIRMED except as to the penalty which shall be MODIFIED to reclusion perpetua. The Division Clerk of Court is directed to CERTIFY and ELEVATE the entire records of this case to the Supreme Court for proper review in accordance with Section 13 (a), Rule 124 of the Revised Rules of Criminal Procedure, as amended by A.M. No. 00-5-03-SC dated September 28, 2004.

In their separate Briefs,[33] appellants assign the following errors:

I.

THE LOWER COURT'S FINDING THAT THE TESTIMONIES OF SPO1 YATCO AND INSPECTOR CORTEZ, THE ONLY WITNESSES OF THE PROSECUTION, WERE "LOGICAL, FORTHRIGHT AND PLAUSIBLE," ARE NOT BASED ON THE EVIDENCE AT ALL. ON THE CONTRARY, THEIR TESTIMONIES ARE REplete WITH MAJOR INCONSISTENCIES, EXAGGERATIONS, CONCOCTIONS, AFTERTHOUGHTS, AND FALSITIES NOT JUSTIFYING A CONVICTION WITH THE PENALTY OF DEATH;

II.

THE LOWER COURT'S FINDING THAT THERE WAS NO ILL-MOTIVE ON THE PART OF THE WITNESSES, ESPECIALLY POLICE OFFICER CORTEZ, IS TOTALLY CONTRARY TO THE EVIDENCE. MOREOVER, THE LOWER COURT FAILED TO APPRECIATE THE RULE THAT, REGARDLESS OF ILL-MOTIVE, IF THE TESTIMONIES OF THE PROSECUTION WITNESSES ARE FLAWED, INCREDIBLE AND FULL OF INCONSISTENCIES, THE SAME WILL NOT BE ENOUGH TO WARRANT CONVICTION;

III.

THE LOWER COURT ERRED IN APPLYING THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF A POLICE OFFICER'S DUTY;

IV.

THE LOWER COURT ERRED IN NOT HOLDING IN THIS CASE THAT THE TESTIMONY OF THE CONFIDENTIAL INFORMANT CANNOT BE DISPENSED;

V.

THE LOWER COURT ERRED IN RULING THAT THE DEFENSE OF DENIAL AND ALIBI IS NOT PERSUASIVE AND CREDIBLE. IT LIKEWISE ERRED IN STATING THAT THE VERSION OF THE

ACCUSED-APPELLANTS IS NOT NATURAL IN THE ORDINARY COURSE OF HUMAN AFFAIRS, AND THAT THE SAME ARE MERELY SELF-SERVING AND NEGATIVE TESTIMONIES;

VI.

THE LOWER COURT GRIEVOUSLY ERRED IN APPRECIATING AN AGGRAVATING CIRCUMSTANCE WHICH WAS NOT EVEN ALLEGED IN THE INFORMATION AND WHICH WAS NOT PROVEN AT ALL.[34]

To secure a conviction for illegal sale of shabu, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof.[35] In prosecutions for illegal sale of shabu, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.[36] In the case at bar, the prosecution was able to establish through testimonial, documentary and object evidence the said elements.

Inspector Cortez, the poseur-buyer, testified that appellants sold to him shabu during a legitimate buy-bust operation. His positive identification of appellants and direct account of the transaction are clear, thus:

PROS. GURAY:

Q:

After you dropped by at the WPD where did you proceed?

A:

We went directly to the residence of our informant wherein the payoff would be made of.

THE COURT:

Q:

Where is the residence of (interrupted)

A:

On Solano Street, Del Pan, Binondo, Manila.

Q:

What time did you arrive at said place?

A:

Around 8:45 or 8:50.

Q:

In the morning?

A:

Yes, sir.

Q:

What happened after you arrived at the place of your confidential informant?

A:

We waited for the arrival of the suspect.

Q:

And did the suspect arrive?

A:

Yes, sir. Minutes later a man went upstairs and I was introduced by our informant to Alias Blady [Vladimir] as the one interested in buying shabu.

x x x x

PROS. GURAY

Q:

And after this Blady (sic) was introduced to you by your confidential informant what happened?

A:

After I was introduced by our informant he asked for the money for the purchase of shabu which we prepared and I showed to him the contents of the brief case and the bundles of the boodle money.

Q:

And after the money in the brief case was shown to Blady (sic) what did you do?

A:

He immediately left to fetch his other companions who will brought (sic) the 300 grams earlier ordered by our informant.

Q:

Did he came (sic) back?

A:

When he returned he was accompanied by two male person who identified themselves as a certain Edgar who claim to be a barangay kagawad and even told me, "Walang problema sa hulihan dito. Sagot ka namin dito."

x x x x

Q:

So, wait. This accused Blady (sic) that man whom you said was introduced to as Blady (sic) who is this?

A:

He was introduced to me.

Q:

Is he one of the accused in this case?

A:

Yes, sir.

Q:

Will you point out to the Court this accused?

A:

That man in the corner.

THE COURT:

“Tumindig yung tinuro.” Witness pointing to Accused (stop) pangalan?

A:

Vladimir.

THE COURT:

Vladimir Amado.

Q:

So he was the first one introduced to you by the informant?

A:

Yes, sir.

Q:

And then after you show the boodle money inside your brief case he left the house of the informant?

A:

Yes, sir.

Q:

What did he tell you before he left?

A:

That he is going to fetch his other two companions who will brought (sic) the shabu.

Q:

So how many minutes later did he return together with his companion?

A:

More or less five minutes.

Q:

He returned together with two other companion?

A:

Yes, sir.

Q:

You were referring to the other two accused in this case?

A:

Yes, your honor.

Q:

Edgar and Vicente Santiago?

A:

Yes, your Honor.

Q:

They were with Vladimir when he came back to the house?

A:

Yes, your Honor.

x x x x

PROS. GURAY:

Q:

If these companions of Vladimir namely Edgar and Vic are in the court room will you be able to identify them?

A:

Yes, sir.

Q:

Will you please look around and point to them if they are in the court room?

A:

Edgar was the one wearing a maroon shirt and sunglass while Vic was wearing a blue t-shirt.

THE COURT:

Yung tinuro tumayo. Witness pointing to two men who answered by the name of (stop) what is your name?

ACCUSED SANTIAGO:

Vicente Santiago, sir.

ACCUSED EDGAR SANTIAGO:

Edgar Santiago, sir.

THE COURT:

Vicente and Edgar Santiago. All right.

PROS. GURAY:

Q:

When this Blady, Edgar and Vic arrived what else happened?

A:

Alias Vic told me that “Pare ditto sa amin maganda ang klase ng aming shabu. Puwede kang bumalik bukas ng hapon o sa kamakalawa para ka makapagpurchase ng another 300 grams ng shabu.”

x x x x

PROS. GURAY:

Q:

Now, on or in what part of the house of the confidential informant did all these transaction happened?

A:

At the terrace on the second floor of the informant’s residence.

Q:

Now, aside from you who else was at the terrace?

A:

My confidential informant and the three suspects.

Q:

Now, after the three suspects were shown the money what happened next?

A:

Alias Edgar brought out the three transparent plastic bags of shabu while Alias Vic brought out the digital weighing scale.

Q:

And what did you do?

A:

The three help (sic) one another in weighing the suspected shabu placed in a three separate plastic bags.

Q:

What was the participation of Vic while the weighing was being made?

A:

He was the one who brought the digital weighing scale.

Q:

What about Edgar? What did he tell you if any?

A:

He was the one who brought the shabu and even told me that “Dito walang problema sa hulihan. Sagot ka namin dito.”

PROS. GURAY:

Q:

After that what happened?

A:

After that they demanded the money. I handed to Alias Blady the brief case where there are bundles of boodle money.[37]

SPO1 Yatco corroborated the aforesaid testimony of Inspector Cortez on relevant points.[38]

The foregoing testimonies are in harmony with the documentary and object evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of Inspector Cortez and SPO1 Yatco to be “logical, forthright and plausible.” Both courts also found no ill motive on their part to testify against appellants.

The prosecution also submitted as its documentary and object evidence the three plastic bags of shabu sold by appellants to Inspector Cortez during the buy-bust operation, the Chemistry Report of PNP Forensic Chemist Tria confirming that the three plastic bags sold by appellants to Inspector Cortez contained 312.2 grams of shabu, and the boodle money used during the buy-bust operation.

The presence of conspiracy among the accused can be proven by their conduct before, during or after the commission of the crime showing that they acted in union with each other, evincing a common purpose or design.[39] It is clear from the testimony of Inspector Cortez that appellants were of one mind in selling shabu to

Inspector Cortez as shown by their acts before, during and after the transaction, to wit: (1) Vladimir asked Inspector Cortez to show him the money; (2) Vladimir fetched Edgardo and Vicente; (3) Edgardo brought out three plastic bags containing shabu; (4) Vicente brought out a digital weighing scale; (5) appellants assisted each other in weighing the three plastic bags of shabu; and (6) Vladimir received the money from Inspector Cortez.[40] Conspiracy having been established, appellants are liable as co-principals regardless of their participation.[41]

The rule is that the findings of the trial court, its calibration of the testimonies of the witnesses and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings are accorded respect if not conclusive effect.[42] This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[43]

Appellants, however, allege in their first assigned error several inconsistencies and falsities in the PINAGSAMA-SAMANG SINUMPAANG SALAYSAY of Inspector Cortez, SPO1 Yatco and PO3 Luna and in the respective court testimonies of Inspector Cortez and SPO1 Yatco regarding the type of phone used by the informant in contacting appellants, the exact address and description of the place where the alleged sale took place, the precise number and position of the back-up team during the buy-bust, the accurate description of appellant's arrest, the kind of service firearm carried by Inspector Cortez during the buy-bust, the number of shots fired by Inspector Cortez during the arrest, and the correct description of the boodle money.[44]

For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged.[45] An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused.[46]

The inconsistencies cited by appellants refer to trivial matters and are clearly beyond the elements of illegal sale of shabu because they do not pertain to the actual buy-bust itself - that crucial moment when appellants were caught selling shabu.[47] Besides, these inconsistencies even bolster the credibility of the prosecution witnesses as they erase any suspicion of a rehearsed testimony.[48]

Appellants, nonetheless, assert that the following are "material inconsistencies" because they refer to the alleged actual sale of shabu: (a) the PINAGSAMA-SAMANG SINUMPAANG SALAYSAY states that Vladimir left the informant's house after having seen the money and after five minutes returned with Edgardo and Vicente, while SPO1 Yatco recounted to the court that Vladimir never left the informant's house and that Edgardo and Vicente arrived minutes after Vladimir entered the house; (b) in the PINAGSAMA-SAMANG-SINUMPAANG SALAYSAY, Inspector Cortez averred that Edgardo introduced himself as a barangay kagawad and told him not to worry about being arrested because they were in charge of the place, while in his court testimony, Inspector Cortez never told the court that Edgardo talked to him; (c) in the PINAGSAMA-SAMANG SINUMPAANG SALAYSAY, Inspector Cortez stated that Vicente merely asked him if he had with him the money for the purchase of the shabu, while during the trial, Inspector Cortez claimed that Vicente also told him, "Pare dito sa amin, maganda ang klase ng shabu. Puwede ka bumalik bukas ng hapon o sa makalawa para maka-purchase ng another 300 grams ng shabu"; (d) in the PINAGSAMA-SAMANG SINUMPAANG SALAYSAY, Inspector Cortez narrated that after the weighing of the three plastic bags of shabu, he immediately handed the briefcase containing bundles of boodle money to Vladimir, while in his court testimony, Inspector Cortez testified that he handed the briefcase to Vladimir after the latter demanded the money; and (e) in the PINAGSAMA-SAMANG SINUMPAANG SALAYSAY, Inspector Cortez asserted that he handed the briefcase to Vladimir, while during the trial, Inspector Cortez testified that he turned over the said briefcase to Edgardo.[49]

Although it is true that the foregoing inconsistencies refer to the situations during the buy-bust itself, these cannot

destroy the positive and credible testimony of Inspector Cortez that he handed over to Vladimir the briefcase with boodle money in exchange for 312.2 grams of shabu. Further, we have consistently ruled that the alleged inconsistencies between the testimony of a witness in open court and his sworn statement are not fatal defects to justify a reversal of judgment of conviction. Such discrepancies do not necessarily discredit the witness since ex-parte affidavits are almost always incomplete. Sworn statements taken ex-parte are generally considered to be inferior to the testimony given in open court.[50]

Appellants likewise posit that the prosecution witnesses testified that the three plastic bags of shabu allegedly seized from appellants were brought to the PNP Crime Laboratory for examination on the day the appellants were arrested on 9 April 1999. The Chemistry Report issued and signed by PNP Forensic Chemist Tria, nevertheless, states that the said three plastic bags of shabu were received by the PNP Crime Laboratory for examination on 10 April 1999. Thus, it is doubtful whether the three plastic bags of shabu allegedly seized from appellants were the same three plastic bags of shabu examined by PNP Forensic Chemist Tria. Appellants also claim that the non-presentation of the weighing scale allegedly seized from them is fatal to the case of the prosecution.[51]

It appears that the three plastic bags of shabu sold by appellants to Inspector Cortez were the same specimen examined and found by PNP Forensic Chemist Tria to be positive for methamphetamine hydrochloride. Inspector Cortez unequivocally testified that, after the three plastic bags of shabu were brought to the Cavite Narcotics Office, these were subsequently submitted by SPO1 Male to the PNP Crime Laboratory in Canlubang, Laguna for examination.[52] Moreover, the Chemistry Report of PNP Forensic Chemist Tria specifically indicates that the specimen submitted were three heat-sealed transparent plastic bags previously marked at the time of their turnover for examination as “Exhibit A-1 NVC 09 APRIL 99” through Exhibit A-3 NVC 09 APRIL 99, each containing white crystalline substance.[53] The same report also clearly states that (1) the case involved was for violation of Republic Act No. 6425; (2) the suspects were the appellants; and (3) the requesting party was the Cavite Narcotics Office.[54]

The non-presentation of the weighing scale is not vital for the conviction of appellants for illegal sale of shabu. As aptly stated by the Office of the Solicitor General (OSG) and the Court of Appeals, a weighing scale is merely an instrument for determining the quantity of shabu and has nothing to do with the elements of illegal sale of shabu.[55]

Anent the second issue, appellants impute ill motive to Inspector Cortez based on the latter’s testimonies that (1) he was “pushed to the wall and against the barrister of the terrace” by the appellants during the arrest; (2) he “received several blows” from appellants; and (3) “the timely arrival of my team members prevented me from being killed by the accused-appellants.”[56]

There is no proof on records showing that Inspector Cortez had ill motive in testifying against appellants. The prosecution witnesses and appellants did not know each other prior to the buy-bust operation. Appellants themselves admitted that they did not have any idea why the buy-bust team had arrested and charged them with illegal sale of shabu.[57] The observation of the OSG on this point is worth noting, thus:

Appellants utterly failed to show ill motive on the part of Cortez. Having been a police officer for more than twenty (20) years, Cortez is used to being “pushed to the wall” and “receiving blows.” It is in his line of work to be physically abused. It comes with the job. Police officers do not avenge every minor scuffle that they get into.[58]

Apropos the third issue, appellants argue that the presumption of regularity in the performance of official duty should not be applied in favor of the prosecution witnesses based on the following alleged irregularities: (1) the buy-bust team led by Inspector Cortez were officers and members of the Narcotics Office in Imus, Cavite, and as

such, they exceeded their authority and jurisdiction when they conducted the alleged buy-bust operation in Binondo, Manila; (2) neither Inspector Cortez nor SPO1 Yatco testified that they actually saw PO3 Paternal write his initials on the boodle money; (3) the boodle money was not entered in the police blotter; and (4) Inspector Cortez and SPO1 Yatco did not testify that they had informed appellants of their constitutional rights as accused during their arrest.[59]

Inspector Cortez and SPO1 Yatco categorically testified that their team had gone to the WPDC in Manila to coordinate first the buy-bust operation before proceeding to Binondo, Manila, where the buy-bust took place.[60] This testimony was supported by a "Coordination Form" prepared by team member PO2 Lising and received by a certain PO3 Baarde and PO3 Arasis of the WPDC.[61] Appellants also failed to state any specific law or regulation mandating that only the Narcotics Office in Manila was authorized to conduct a buy-bust operation within Manila. Further, it should be noted that the informant was an asset of the Cavite Narcotics Office.

The failure of Inspector Cortez to testify specifically that he saw PO3 Paternal write his initials on the boodle money as well as the doubt on whether the boodle money was entered in the police blotter are not fatal to the cause of the prosecution. Neither law nor jurisprudence requires the presentation of any of the money used in a buy-bust operation, much less is it required that the boodle money be marked or entered in the police blotter.[62] As earlier discussed, the only elements necessary to consummate the crime is proof that the illicit transaction took place, coupled with the presentation in court of the corpus delicti or the shabu as evidence. Both were satisfactorily proved in the instant case.

We have examined the transcript of stenographic notes of Inspector Cortez and SPO1 Yatco and found that the prosecutor and defense counsels did not specifically ask the two if they apprised appellants of their constitutional rights as accused. Thus, Inspector Cortez and SPO1 Yatco cannot be faulted for failing to mention this particular aspect in their testimony. At any rate, what is clear is that Inspector Cortez, SPO1 Yatco and PO3 Luna categorically stated in their PINAGSAMA-SAMANG SINUMPAANG SALAYSAY that appellants were informed of their constitutional rights as accused during the buy-bust.[63]

The testimonies of the police officers with respect to appellants' participation in the drug-related transaction, which was the subject of the buy-bust operation, carried with it the presumption of regularity in the performance of official functions. Courts accord credence and full faith to the testimonies of police authorities, as they are presumed to be performing their duties regularly, absent any convincing proof to the contrary.[64]

Regarding the fourth issue, appellants contend that the testimony of the informant is necessary because he witnessed the alleged buy-bust operation and his testimony is the best evidence for the prosecution.[65]

Well-settled is the rule that the testimony of an informant who witnessed the illegal sale of shabu is not essential for conviction and may be dispensed with if the poseur-buyer testified on the same, because the informant's testimony would merely corroborate that of the poseur-buyer.[66]

With regard to the fifth issue, appellants claim that their defenses consisting of denials and alibis deserve more credence because the testimonies of the prosecution witnesses are full of inconsistencies.[67]

The defenses of denials and alibi have been invariably viewed by us with disfavor for it can easily be concocted but difficult to prove, and they are common and standard defense ploys in most prosecutions arising from violations of the Dangerous Drugs Act.[68]

As heretofore discussed, the inconsistencies in the testimonies of the prosecution witnesses do not warrant the reversal of appellant's conviction in light of the positive and candid account of Inspector Cortez that appellants sold to him 312.2 grams of shabu in exchange for boodle money. The testimony of a single witness, if positive

and credible, as in the case of Inspector Cortez, is sufficient to support a conviction.[69]

It is a well-entrenched doctrine in criminal law that as between denials or alibi and positive testimony on affirmative matters, the latter is accorded greater evidentiary weight.[70]

As regards the sixth issue, appellants asseverate that the RTC erred in imposing the penalty of death and in appreciating the aggravating circumstance of organized/syndicated crime group under Article 62 of the Revised Penal Code.[71]

Section 15 of Article III in relation to Section 20 of Article IV of Republic Act No. 6425, as amended by Section 17 of Republic Act No. 7659, provides that the penalties for selling 200 grams or more of shabu are reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos. Section 21 of Article IV thereof states that the foregoing penalties shall also be applied in case of any attempt or conspiracy to sell shabu.

Article 62 of the Revised Penal Code, as amended by Section 23 of Republic Act No. 7659, mandates that the maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group. The same article defines an organized/syndicated crime group as a group of two or more persons collaborating, confederating, or mutually helping one another for the purposes of gain in the commission of any crime.

We agree with appellants' contention, as affirmed by the OSG and the Court of Appeals, that the RTC erred in appreciating the aggravating circumstance of organized/syndicated crime group and in imposing the maximum penalty of death.

While the existence of conspiracy among appellants in selling shabu was duly established, there was no proof that appellants were a group organized for the general purpose of committing crimes for gain, which is the essence of the aggravating circumstance of organized/syndicated group under Article 62 of the Revised Penal Code.[72]

Moreover, this aggravating circumstance was not specifically alleged in the information. Both law and jurisprudence require aggravating circumstances to be expressly and specifically alleged in the complaint or information; otherwise, the same will not be considered by the court even if proved during the trial.[73]

Thus, in the absence of any mitigating or aggravating circumstance, the proper penalty imposable on each of the appellants is the lesser penalty of reclusion perpetua pursuant to Article 63 of the Revised Penal Code.

The fine of P500,000.00 imposed by the RTC on each of the appellants is in accord with Section 15, Article III of Republic Act No. 6425.

WHEREFORE, after due deliberation, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01255 dated 29 March 2006, is hereby AFFIRMED in toto.

SO ORDERED.

Ynares-Santiago, Acting C.J., Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Elvi John S. Asuncion with Associate Justices Noel G. Tijam and Mariflor P. Punzalan Castillo, concurring. Rollo, pp. 3-16.

[2] Penned by Judge Perfecto A.S. Laguio, Jr. CA rollo, pp. 24-27.

[3] Records, pp. 1-2.

- [4] Id. at 51.
- [5] TSN, 16 June 1999, pp. 3-12; TSN, 1 September 1999, pp. 4-13. Records, p. 21.
- [6] Id. at 13-15; id. at 14-15.
- [7] Id. at 16-18; id. at 16-17.
- [8] Id. at 19-23; id. at 17-31.
- [9] Id. at 23-27; id. at 31-38.
- [10] Records, pp. 5-7.
- [11] Id. at 8-10.
- [12] Id. at 11.
- [13] Id. at 12-14.
- [14] Id. at 15.
- [15] Id. at 16.
- [16] Id. at 62 and 67.
- [17] Id. at 17.
- [18] Id. at 19.
- [19] Id. at 21.
- [20] Id. at 22-23.
- [21] TSN, 3 August 2000, pp. 2-3.
- [22] TSN, 16 November 1999, pp. 3-4; Records, p. 27.
- [23] Id. at 5-11; TSN, 3 August 2000, pp. 4-5; TSN, 5 December 2000, pp. 3-7.
- [24] Records, p. 263.
- [25] Id. at 27-30.
- [26] Id. at 31-32.
- [27] Id. at 33-34.
- [28] Id. at 35-38.
- [29] Id. at 39.
- [30] CA Rollo, pp. 24-27.
- [31] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.
- [32] Rollo, pp. 3-16.
- [33] CA rollo, pp. 42-52 & 68-133.
- [34] CA rollo, pp. 43 and 80-81.

- [35] *People v. Isnani*, G.R. No. 133006, 9 June 2004, 431 SCRA 439, 449.
- [36] *People v. Lee*, 457 Phil. 443, 449 (2003).
- [37] TSN, 1 September 1999, pp. 14-25.
- [38] TSN, 16 June 1999, pp. 8-28.
- [39] *People v. Ramos*, G.R. No. 135204, 14 April 2004, 427 SCRA 299, 308.
- [40] *Id.*
- [41] *People v. Zheng Bai Hui*, 393 Phil. 68, 138 (2000).
- [42] *People v. Aguila*, G.R. No. 171017, 6 December 2006, 510 SCRA 642, 661.
- [43] *Id.*
- [44] CA rollo, pp. 86-107.
- [45] *People v. Isnani*, *supra* note 35 at 454.
- [46] *Id.* at 453-454.
- [47] *People v. Razul*, 441 Phil. 62, 88-89 (2002).
- [48] *People v. Chua*, 416 Phil. 33, 51-52 (2001).
- [49] CA rollo, pp. 71-134.
- [50] *People v. Beltran, Jr.*, G.R. No. 168051, 27 September 2006, 503 SCRA 715, 729, citing *People v. Lazaro*, 319 Phil. 352, 361 (1995) and *People v. Layno*, 332 Phil. 612, 625 (1996).
- [51] CA rollo, pp. 107-112.
- [52] Records, p. 15.
- [53] *Id.* at 16.
- [54] *Id.*
- [55] CA rollo, pp. 178-179.
- [56] *Id.* at 114-117.
- [57] TSN, 16 November 1999, pp. 16 & 22; TSN, 3 August 2000, pp. 2-3.
- [58] CA rollo, p. 180.
- [59] *Id.* at 118-127.
- [60] TSN, 1 September 1999, p. 14; TSN, 16 June 1999, p. 14.
- [61] Records, p. 21.
- [62] *People v. Gonzales*, 430 Phil. 504, 515 (2002).
- [63] Records, p. 26.
- [64] *People v. Ganenas*, 417 Phil. 53, 68 (2001), citing *People v. Sotto*, G.R. No. 106099, 8 July 1997, 275 SCRA

191, 204.

[65] CA rollo, pp. 49-50.

[66] *People v. Li Yin Chu*, 467 Phil. 582, 597-598 (2004).

[67] CA rollo, pp. 127-131.

[68] *People v. Isnani*, supra note 35 at 454.

[69] *People v. Sampaga*, G.R. No. 139823, 12 March 2004, 425 SCRA 426, 434.

[70] *People v. Major Comiling*, 468 Phil. 869, 890 (2004).

[71] CA rollo, pp. 81-85.

[72] *People v. Alberca*, 327 Phil. 398, 423-430 (1996).

[73] Sections 8 & 9, Rule 110 of the Revised Rules of Court; *People v. Legaspi*, 409 Phil. 254, 273-274 (2001).

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