

## THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JERRY SANTOS Y MACOL AND RAMON CATOC Y PICAYO, ACCUSED-APPELLANTS.

*G.R. No. 176735. June 26, 2008*

Ponente: CHICO-NAZARIO, J.

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### CHICO-NAZARIO, J.:

Assailed before Us is the Decision[1] of the Court of Appeals dated 29 November 2006 in CA-G.R. C.R.-HC No. 01291 which affirmed the Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 70, in Criminal Cases No. 12193-D and No. 12194-D, finding accused-appellants Jerry Santos y Macol and Ramon Catoc y Picayo guilty of illegal sale of methamphetamine hydrochloride, more popularly known as shabu, and finding accused-appellant Ramon Catoc y Picayo guilty of illegal possession of the said prohibited drug, respectively.

On 10 March 2003, two Informations were filed against appellants Jerry Santos y Macol and Ramon Catoc y Picayo before the RTC of Pasig City, for violating the provisions of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

In Criminal Case No. 12193-D, appellants Santos and Catoc allegedly violated Section 5, Article II of Republic Act No. 9165[3] in the following manner:

On or about March 8, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO3 Carlo Luna, a police poseur buyer, one (1) heat-sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.[4] (Emphasis ours).

On the other hand, in Criminal Case No. 12194-D, appellant Catoc was additionally charged with violation of Section 11, Article II of the same law,[5] committed as follows:

On or about March 8 2003, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control one (1) heat-sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methylamphetamine hydrochloride, a dangerous drug, in violation of the said law.[6] (Emphasis ours).

During their arraignment on 19 May 2003, appellants Santos and Catoc pleaded not guilty to the above-mentioned charges.[7]

On 3 June 2003, the Pre-Trial Conference of the cases was terminated without the prosecution and the defense agreeing to any stipulation of facts.[8]

On 5 August 2003, the parties, however, agreed to re-open the Pre-Trial Conference and they entered into a stipulation of facts as to the testimony to be given by the first prosecution witness, Forensic Chemist Police Inspector (P/Insp.) Lourdeliza Cejes.[9] As contained in the Pre-Trial Order dated 5 August 2003, the parties stipulated on: (1) the due execution and genuineness of the Request for Laboratory Examination dated 8 March 2003, and the stamp showing receipt thereof by the Philippine National Police (PNP) Crime Laboratory; (2) the due execution, genuineness and truth of the contents of Physical Science Report No. D-405-03E issued by Forensic Chemist P/Insp. Lourdeliza Cejes, the finding or conclusion appearing on the report, and the signature of the forensic chemist over her typewritten name appearing therein; and (3) the existence of the plastic sachets, but not their source or origin, contained in a brown envelope, the contents of which were the subject of the Request for Laboratory Examination.[10]

Thereafter, the cases were consolidated and tried jointly.[11]

The prosecution presented two witnesses: (1) Police Officer (PO)3 Carlo Luna[12] and (2) Senior Police Officer (SPO)3 Leneal Matias,[13] both members of the Station Drug Enforcement Unit (SDEU)[14] of the Pasig City Police Station.

The defense, on the other hand, presented (1) appellant Jerry Santos y Macol[15]; (2) appellant Ramon Catoc y Picayo[16]; (3) Maria Violeta Catoc,[17] sister of appellant Catoc; and (4) Eric Santos,[18] brother of appellant Santos.

The People's version of the facts shows that on 8 March 2003, the SDEU operatives of the Pasig City Police conducted a buy-bust operation in a residential area along Dr. Sixto Antonio Avenue, Brgy. Rosario, Pasig City, on the basis of reports that a certain alias Monching Labo was selling illegal drugs in the said locality.[19] Accompanied by a confidential informant, the police team composed of PO3 Carlo Luna, SPO3 Leneal Matias, PO1 Michael Espares and PO1 Michael Familara, proceeded to the target area at around 1:15 to 1:20 a.m. on the above-mentioned date. PO3 Carlo Luna was to act as the poseur-buyer, whereas the other members of the team were to serve as his backup.[20]

Upon reaching the designated place, PO3 Luna and the informant alighted from their vehicle, while the rest of the team were left inside.[21] The informant then pointed to two persons standing along the target area, one of whom was Monching Labo, later identified as appellant Ramon Catoc y Picayo.[22] After approaching, the informant introduced PO3 Luna as a shabu customer to one of the persons, later identified as appellant Jerry Santos y Macol. Appellant Santos then asked PO3 Luna how much worth of shabu he was buying and asked for the money. PO3 Luna gave appellant Santos the buy-bust money consisting of a pre-marked P100.00 bill.[23] Appellant Santos handed this money to appellant Catoc, who took out from his pocket a sealed transparent plastic sachet containing a white crystalline substance,[24] which he handed back to appellant Santos. When appellant Santos gave the plastic sachet to PO3 Luna, the latter nabbed the former and introduced himself as a policeman.[25]

At that point, the other members of the team arrived and likewise held and arrested appellant Catoc. SPO3 Matias then ordered appellant Catoc to empty the contents of his pockets. After having done so, another plastic sachet containing a similar crystalline substance[26] was recovered from appellant Catoc, together with the marked P100.00 buy-bust money.[27] Immediately thereafter, the policemen marked the two plastic sachets.[28] The sachet handed by appellant Santos to PO3 Luna was marked with the latter's initials "CEL," his signature, and appellant Santos's initials "JMS." [29] On the other hand, the sachet recovered from appellant Catoc by SPO3 Matias was marked with the latter's initials "LTM," his signature and appellant Catoc's initials "RPC." [30] The policemen then informed the appellants of their violations and apprised them of their constitutional rights.[31] Afterwards, appellants Santos and Catoc were brought to the Pasig City Police Station at Pariancillo Park, Pasig

City, for proper investigation.

PO3 Luna submitted the two plastic sachets containing the white crystalline substance to the PNP Crime Laboratory Service, Eastern Police District in Mandaluyong City for an examination of the contents thereof.[32] The laboratory test results as contained in Chemistry Report No. D-405-03E[33] stated the following:

SPECIMEN SUBMITTED:

Two (2) heat-sealed transparent plastic sachets with markings "CEL/JMS 030803 and RPC/LTM 030803" containing 0.03 gram of white crystalline substance and marked as A and B respectively.

x x x x

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave [a] POSITIVE result to the tests for Methylamphetamine hydrochloride, a dangerous drug. x x x

CONCLUSION:

Specimens A and B contains (sic) Methylamphetamine hydrochloride, a dangerous drug.

As expected, the appellants offered a version of the facts that was diametrically opposed to that of the prosecution. According to them, there was no buy-bust operation to speak of and that prior to their arrests, they were literally strangers to each other.

Appellant Jerry Santos y Macol testified that on 8 March 2003, at around 12:00 midnight to 1:00 a.m., while he was watching television at their house at 151 Dr. Sixto Antonio Avenue, Barangay (Brgy.) Rosario, Pasig City, and was about to sleep, five male persons in civilian clothing suddenly entered and handcuffed him.[34] Santos claimed that he voluntarily went with the men when they tried to arrest him because his ailing mother, who was then awakened, was already becoming nervous.[35] Santos was brought outside and placed in a tricycle, and the entire group left for the police station. There, Santos was detained and questioned about the marked money, which he said he knew nothing about. Santos was then charged with the offense of selling illegal drugs in violation of Section 5, Article II of Republic Act No. 9165.[36] It was also at that time in the police station where he first met appellant Catoc.[37]

For his part, appellant Ramon Catoc y Picayo narrated that on 8 March 2003, between the hours of 11:00 p.m. and 12:00 midnight, he awoke to a loud sound at the door of their house at 125 Dr. Sixto Antonio Avenue, Brgy. Rosario, Pasig City.[38] When Catoc opened the door, five male persons with guns entered their house.[39] The men frisked Catoc and searched his house. After being likewise awakened, Catoc's mother asked the men what his son's fault was. They replied that they were looking for the drugs that Catoc was selling.[40] When their search yielded nothing, the men mauled Catoc. Afterwards, Catoc was placed in a tricycle and the group headed for a gasoline station along J. E. Manalo Street. There, Catoc was transferred to a parked van; inside the vehicle was appellant Jerry Santos y Macol, whom the former saw for the first time.[41] The men took the appellants to the police station in Pariancillo Park where they were again mauled. The policemen who arrested the appellants produced two plastic sachets of shabu and a P100.00 bill and alleged that the same were taken from Catoc's possession. The appellants were then charged with violation of Sections 5 and 11, Article II of Republic Act No. 9165.[42]

On 4 May 2005, the trial court rendered its decision, the pertinent portion of which states:

The Court is more inclined to give credence to the testimonies of the prosecution witnesses given the presumption of regularity in the performance of official duty accorded to them by law and jurisprudence

vis-à-vis the self-serving disclaimers of the herein accused whose version of the incident as narrated above hardly inspires belief.

It has been clearly established from the evidence adduced by the State that at around 1:00 in the morning of March 8, 2003, accused Jerry Santos and Ramon Catoc, in conspiracy with one another, sold or traded and delivered, to PO3 Carlo Luna, in a buy-bust operation, one transparent plastic sachet of shabu containing white crystalline substance (Exh. "C-1") in consideration of the amount of PHP 100.00 (Exh. "D"). x x x

That there was [a] conspiracy between the two accused as alleged in the information in Criminal Case No. 12193-D, is evident. The transaction was successfully consummated between the poseur buyer PO3 Luna, on the one hand, and the accused Ramon Catoc, together with his co-accused, Jerry Santos, on the other, with accused Santos receiving the marked money from the poseur buyer and thereafter handing the same to his co-accused Catoc who, thereafter, took out from his right pocket a plastic sachet of shabu which he gave to Santos, and which the latter in turn handed to PO3 Luna. There can be no other conclusion that can be drawn from the above concerted actions of both accused, but that they were bound by a common purpose and community of interest, indicative of conspiracy, in committing the offense charged against them.

On the same occasion of the buy-bust operation, the police officers were also able to recover from the possession of accused Ramon Catoc another sachet of shabu weighing 0.03 grams (Exh. "C-2") which is in violation of Section 11 (Possession of Dangerous Drugs), Article II of the same law, subject of Criminal Case No. 12194-D, which penalizes the mere possession of dangerous drugs w/o (sic) being authorized by law.

x x x x

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

In Criminal Case No. 12193-D, both accused, JERRY SANTOS y MACOL and RAMON CATOC y PICAYO are hereby found GUILTY beyond reasonable doubt of the offense of Violation of Section 5, Article II, Republic Act [No.] 9165 (illegal sale of shabu) and are hereby sentenced to LIFE IMPRISONMENT and to solidarily pay a Fine of Five Hundred Thousand Pesos (PHP500,000.00).

In Criminal Case No. 12194-D, accused RAMON CATOC y PICAYO is hereby found GUILTY beyond reasonable doubt of the offense of Violation of Section 11, Article II, Republic Act [No.] 9165 (illegal possession of shabu) and is hereby sentenced to Twelve (12) Years and One (1) Day to Twenty (20) Years and to pay a Fine of Three Hundred Thousand Pesos (PHP 300,000.00).

Considering the penalty imposed by the Court, [t]he immediate commitment of accused Jerry Santos and Ramon Catoc to the National Penitentiary, New Bilibid Prisons, Muntinlupa City is hereby ordered.

Pursuant to Section 20 of Republic Act [No.] 9165, the amount of PHP 100.00 recovered from accused Ramon Catoc representing the proceeds from the illegal sale of the transparent plastic sachet of shabu is hereby ordered forfeited in favor of the government.

Again, pursuant to Section 21 of the same law, representatives from the Philippine Drug Enforcement Agency (PDEA) is (sic) hereby ordered to take charge and have custody over the sachets of shabu subject of these cases, for proper disposition.[43]

In an Order dated 21 June 2005, the trial court elevated the entire records of the case to the Court of Appeals for automatic review in accordance with our ruling in *People v. Mateo*.<sup>[44]</sup>

On 29 November 2006, the Court of Appeals rendered its decision, the dispositive portion of which reads:

WHEREFORE, the Decision appealed from is hereby AFFIRMED.

In sustaining the trial court, the Court of Appeals ruled that the buy-bust operation conducted by the SDEU

operatives was legitimate and regular.[45] Furthermore, the testimonies of the appellants and their witnesses were said to have contained irreconcilable inconsistencies and that no ill motive for the alleged frame-up was put forth by the appellants.[46]

Appellants Santos and Catoc filed a Notice of Appeal assailing the appellate court's decision before the Supreme Court.[47]

In a Resolution[48] dated 4 June 2007, the Court required the parties to file their respective supplemental briefs, if they so desired, within 30 days from notice. The parties manifested their intention not to file their supplemental briefs anymore, as their respective Briefs already encapsulated all the matters and arguments that support their positions.[49]

In pleading for their innocence, appellants assign the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS OF VIOLATION OF SECTIONS 5 AND 11, ARTICLE II, OF THE REPUBLIC ACT NO. 9165, WHEN THE LATTER'S GUILT WERE NOT PROVEN BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING [THAT] THE ACCUSED-APPELLANTS CONSPIRED IN COMMITTING ILLEGAL SELLING AND ILLEGAL POSSESSION OF DANGEROUS DRUGS.

Appellants contend that the trial court erred in convicting them, as their guilt was not proven beyond reasonable doubt, considering that the prosecution failed to prove that a buy-bust operation took place and that their arrests without warrant were not legally effected. Appellants also maintain that there was no basis for the trial court's conclusion that a conspiracy existed between them.

The arguments put forth by the appellants fail to persuade.

Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[50]

After a careful evaluation of the entire records of the instant case, we find no error in the trial and the appellate courts' factual findings and conclusions.

For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of Republic Act No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[51] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti.[52]

In the present case, all the elements of the crime have been sufficiently established. The prosecution witnesses PO3 Luna and SPO3 Matias consistently testified that a buy-bust operation did indeed take place, and the shabu subject of the sale was presented and duly identified in open court. PO3 Luna, being the poseur-buyer, positively

identified appellants Santos and Catoc as the persons who sold the sachet containing a white crystalline substance,[53] which was later confirmed by a chemical analysis thereof to be shabu.[54]

The relevant portions of PO3 Luna's testimony that detailed the events leading to the arrests of appellants are as follows:

Q:

Do you remember having been assigned as a poseur buyer on said date, March 8, 2003?

A:

Yes, sir.

Q:

Against whom was supposed to be the task that you are going to perform as a poseur buyer?

A:

Against Monching Labo, sir.

x x x x

Q:

What was the basis of this planned operation against Monching Labo?

A:

Because we have been receiving reports that this certain Monching Labo has been selling illegal drugs along Dr. Sixto Avenue in Pasig, sir.

Q:

Are you trying to say that March 8 was not the first time that you received information regarding Monching Labo?

A:

Yes, sir.

Q:

But it was only March 8 that you decided to conduct a buy-bust operation against Monching Labo?

A:

Yes, sir.

Q:

Were there preparations made by your office or by you regarding this plan, buy-bust operation, to be conducted against Monching Labo?

A:

Yes, sir, we contacted an informant to confirm where Monching Labo sells illegal drugs.

x x x x

Q:

What are you going to use in buying?

A:

Marked money, sir.

Q:

Did you prepare for that also?

A:

Yes, sir.

Q:

Were there other police personnel that were assigned, aside from you, to conduct this buy-bust operation against Monching Labo?

A:

Yes, sir, SPO3 Leneal Matias, PO1 Michael Espares and PO1 Michael Familara.

x x x x

Q:

What were supposed to be the role of these other police officers that were going to accompany you particularly, Matias, Espares and Familiarara?

A:

They will act as back-up, sir.

Q:

You said you prepared for a buy-money, how much was this?

A:

One Hundred (PHP 100.00) Peso bill, sir.

x x x x

Q:

Did you proceed, as plan, to the target area?

A:

Yes, sir.

Q:

And where was this, mr. (sic) witness?

A:

Along Dr. Sixto Antonio, Brgy. Rosario, Pasig City, sir.

Q:

What time did you reach that place?

A:

About 1:15 to 1:20, sir.

Q:

Of?

A:

In the early morning of 1:15 to 1:20 a.m., sir.

Q:

What else happened after you reached the place?

A:

When we were ten (10) meters away from the designated area, the informant pointed to us to two persons who were standing along Dr. Sixto Antonio Avenue, Rosario, Pasig City, sir.

x x x x

Q:

Who are these two persons, if you know?

A:

According to the informant, he is Monching Labo, sir.

Q:

Meaning, one of them is Monching Labo?

A:

Yes, sir.

Q:

After one of them has been identified by your informant, what else did you do if any, mr. (sic) witness?

A:

The informant and I approached them, and I was introduced by the informant, sir.

Q:

How were you introduced?

A:

That I was a customer for shabu, and that I wanted to buy, sir.

Q:

To whom did he tell from these two persons that you were interested to buy?

A:

I was introduced to Jerry Santos, sir.

Q:

In other words, the other person is a certain Jerry Santos?

A:

Yes, sir.

x x x x

Q:

After you were introduced as [an] interested buyer to said Jerry Santos, what else happened after that?

A:

He asked me how much would I buy, and he asked me for the money. And then, I told him just PHP100.00, sir.

Q:

And when Jerry Santos asked you for the money, did you give him the money?

A:

Yes, sir.

Q:

And after you gave him the money, what happened next?

A:

I saw Jerry handed the money to the other person, sir.

Q:

When you say other person, this is Monching Labo?

A:

Yes, sir.

Q:

And after Jerry Santos handed the One Hundred (PHP100.00) Peso bill to Monching Labo, what else happened, if any?

A:

Monching Labo took the PHP100.00 bill. After that, he put it inside his pocket, and then, he got something from his pocket and handed it to Jerry, sir.

Q:

And after this something was handed to Jerry Santos, what else happened?

A:

Jerry Santos gave to me what was given to him by Monching, sir.

Q:

And to your personal knowledge, what is that something that was given by Monching to Jerry Santos who, Jerry Santos in turn handed to you?

A:

That was the shabu I was buying which was contained in a plastic sachet, sir.

Q:

When you say contained in a plastic sachet, you mean there is only one (1)?

A:

Yes, sir.

Q:

After you received this one alleged plastic sachet of shabu from Jerry Santos, what else did you do, if any?

A:

I held Jerry Santos and introduced myself as a police officer, sir.

Q:

After that, what happened next, if any?

A:

My companions arrived and then, they also held Monching Labo sir.

Q:

What else happened after that, mr. (sic) witness?

A:

Police Officer Matias ordered Monching Labo to empty the contents of his pocket, sir.

Q:

And did Monching Labo comply?

A:

Yes, sir.

Q:

Would you know what Matias discovered after Monching Labo complied with his order to empty his pocket?

A:

Yes, sir, because he also recovered another plastic sachet, sir.

Q:

Who recovered?

A:

SPO3 Matias, sir.

Q:

Which came from the pocket of Monching Labo?

A:

Yes, sir.

Q:

After this, what did you do or, your team do to the two persons?

A:

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

Q:

How about the two plastic sachets, the first one that was sold and the other one that was recovered by SPO3 Matias, what was your disposition about it?

A:

Right there and then at the place, we already placed the markings on the sachets, sir.

Q:

After that, what else did you do with these two sachets?

A:

We submitted the same to the laboratory for examination, sir.

Q:

Do you remember who delivered it personally?

A:

Yes, sir.

Q:

Who?

A:

I did, sir.

Q:

Did you come to know later the true identity of Jerry Santos and Monching Labo to whom you have transaction?

A:

Yes, sir.

Q:

Would Jerry Santos [be] the true name of this Jerry Santos you mentioned earlier?

A:

Yes, sir.

Q:

How about this Monching Labo, did you come to know what is his true name?

A:

Yes, sir. After we have brought him to the police station, that's when we discovered his real name, sir.

Q:

And what is his real name?

A:

Ramon Catoc, sir.[55]

The testimony of SPO3 Matias on the conduct of the buy-bust operation corroborated the above testimony of PO3 Luna on all material points and was equally clear and categorical.

Also proven from the testimonies of both PO3 Luna and SPO3 Matias is the charge against appellant Catoc in Criminal Case No. 12194-D for violation of Section 11, Article II, Republic Act No. 9165 (illegal possession of dangerous drugs). It was shown that appellant knowingly carried with him the plastic sachet of shabu without legal authority at the time he was caught during the buy-bust operation.

On the other hand, the appellants' contention that no buy-bust operation took place was plainly anchored on the testimonies of both appellants, who both gave different versions of what transpired during the time and date in question; of Maria Violeta Catoc, sister of appellant Ramon Catoc; and of Eric Santos, the brother of appellant Jerry Santos. Both appellants chorused a single line – alibi. They strongly insisted that they were in their respective houses during the alleged operations.

The singular reliance of the appellants on their alibis to argue their cases was misplaced. As observed by the trial court, the self-serving disclaimers of the appellants inspired less belief than the testimonies of the prosecution witnesses, who had in their favor a presumption of regularity accorded to them by law.[56] The respective alibis of appellants and their witnesses also contained irreconcilable inconsistencies that only weakened their worth.

We uphold the presumption of regularity in the performance of official duties. This presumption in favor of PO3 Luna and SPO3 Matias was not overcome. As testified to by the appellants, they did not know any of the policemen who arrested them, and it was only during the trial in open court that they came to know of the identities of the above-mentioned policemen.[57] Thus, there was no indication that the police were impelled by any improper motive in making the arrests.

In appellant Jerry Santos's testimony on the events leading to his arrest, he repeatedly changed his answer upon being asked why he voluntarily went with the five men who entered his house on the night in question. In his direct testimony, appellant Santos testified that he went with the men so that his mother's nervousness would not be further aggravated.[58] During his cross-examination, he then stated that he voluntarily went with the men so as not to awaken his sleeping mother.[59] Upon being confronted with these statements, Santos then changed his answer again and stated that his mother was already awake at the time he went with the policemen.[60]

More glaring than the above-mentioned inconsistencies, however, are the discrepancies in the testimonies of appellants Jerry Santos and Ramon Catoc on the manner in which they were taken to the police station and the

circumstances of their first meeting. The very premise of their defense is that they were total strangers to each other; thus, they could not have been together at the time when they were arrested, much less were they in conspiracy with each other in the alleged commission of the crimes charged.

Appellant Jerry Santos testified that after he was brought out of his house, he was placed in a tricycle and was then taken straight to the police station in Pariancillo Park, Pasig City.[61] While in detention, he allegedly met Ramon Catoc for the first time.[62]

Appellant Ramon Catoc, on the other hand, gave an entirely contradictory account of the said events. Catoc narrated in his direct testimony that after the men took him and placed him in a tricycle, he was taken to a gasoline station along J. E. Manalo Street and was transferred to a parked van. Aboard the vehicle, he said, was appellant Santos, whom he claimed he saw and came to know for the first time.[63]

Even the testimony of defense witness Eric Santos, the brother of appellant Jerry Santos, contained some noticeable incongruity with the appellants' narration of events. As remarked upon by the Court of Appeals,[64] Eric Santos testified that the arrest of his brother was made at 8:00 p.m. on 8 March 2003.[65] The timeline of both the prosecution and the defense, however, puts the occurrence of the events in question between the hours of 11:00 p.m. and 1:00 a.m.[66]

The testimonies of Maria Violeta Catoc, sister of appellant Catoc, and Eric Santos, brother of appellant Santos, are also suspect. Without clear and convincing evidence, no credence can be accorded them.

In all of the above instances, no satisfactory explanation was offered by appellants to resolve the conflicting accounts. No other evidence was likewise offered to buttress these testimonies, thereby weakening appellants' alibis, as against the candid and straightforward testimonies of the prosecution witnesses.

As consistently enunciated by this Court, the established doctrine is that, for the defense of alibi to prosper, the accused must prove not only that he was at some other place at the time of the commission of the crime, but also that it was physically impossible for him to be at the locus criminis or within its immediate vicinity. The defense of alibi must be established by positive, clear and satisfactory evidence, the reason being that it is easily manufactured and usually so unreliable that it can rarely be given credence. This is especially true in case of positive identification of the culprit by reliable witnesses, which renders their alibis worthless. Positive identification prevails over denials and alibis.[67]

What is quite important to note at this point is the fact that the defense failed to point out any single mistake or inconsistency in the testimonies of either policeman. Consequently, the respective rulings of the trial court and the Court of Appeals upholding the regularity and the legitimacy of the conduct of the buy-bust operation in this case are hereby affirmed.

The claim of appellants that their warrantless arrests were illegal also lacks merit. The Court notes that nowhere in the records did we find any objection by appellants to the irregularity of their arrests prior to their arraignment. We have held in a number of cases that the illegal arrest of an accused is not a sufficient cause for setting aside a valid judgment rendered upon a sufficient complaint after a trial free from error; such arrest does not negate the validity of the conviction of the accused. It is much too late in the day to complain about the warrantless arrest after a valid information has been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered against him.[68]

Nevertheless, our ruling in *People v. Cabugatan*[69] provides that:

The rule is settled that an arrest made after an entrapment does not require a warrant inasmuch as it is considered a valid warrantless arrest pursuant to Rule 113, Section 5(a) of the Rules of Court, which states:

SEC. 5. Arrest without warrant; when lawful. - A peace officer or a private person may, without a 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.

As we have already declared the legality of the buy-bust operation that was conducted by the police, it follows that the subsequent warrantless arrests were likewise legally effected. Furthermore, any search resulting from the lawful warrantless arrests was also valid, because the appellants committed a crime in flagrante delicto; that is, the persons arrested committed a crime in the presence of the arresting officers.[70]

As for appellants' contention that the trial court erred in finding the existence of a conspiracy, the same should also fail. Contrary to appellants' assertions,[71] the findings of the trial court that they conspired with each other is limited only to the crime of illegal sale of dangerous drugs in Criminal Case No. 12193-D, and does not pertain to the crime of illegal possession of dangerous drugs in Criminal Case No. 12194-D.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy. Direct proof, however, is not essential to show conspiracy.[72] It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective is sufficient.[73] As correctly held by the trial court, the act of appellant Santos in receiving the marked money from PO3 Luna and handing the same to appellant Catoc, who in turn gave a sachet containing shabu to appellant Santos to give the policeman, unmistakably revealed a common purpose and a community of interest indicative of a conspiracy between the appellants.[74]

In light of the foregoing, we rule that the guilt of appellants Santos and Catoc has been established beyond reasonable doubt. A determination of the appropriate penalties to be imposed upon them is now in order.

Under the law, the illegal sale of shabu carries with it the penalty of life imprisonment to death and a fine ranging from five hundred thousand pesos (P500,000.00) to ten million pesos (P10,000,000.00), regardless of the quantity and purity of the substance involved or shall act as a broker in any such transaction.[75] On the other hand, the illegal possession of less than five (5) grams of said dangerous drug is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from three hundred thousand pesos (P300,000.00) to four hundred thousand pesos (P400,000.00).[76]

In accordance with Section 98, Article XIII of Republic Act No. 9165, the provisions of the Revised Penal Code find limited applicability with respect to the provisions of the said Act. Section 98 reads:

Sec. 98. Limited Applicability of the Revised Penal Code. – Notwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3815), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be reclusion perpetua to death.

Thus, in determining the imposable penalty, Article 63(2) of the Revised Penal Code shall not be applied. Under this article, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the lesser penalty shall be applied when there are neither mitigating nor aggravating circumstances.[77] Since Section 98 of the Drugs Law contains the word "shall," the non-applicability of the Revised Penal Code provisions is mandatory, subject to exception only in case the offender is a minor.[78]

In the imposition of the proper penalty, the courts, taking into account the circumstances attendant in the

commission of the offense, are given the discretion to impose either life imprisonment or death, and the fine as provided for by law. In light, however, of the effectivity of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been prohibited. Consequently, the penalty to be meted out to appellant shall only be life imprisonment and fine.[79] Hence, the penalty of life imprisonment and a fine of P500,000.00 were properly imposed on appellants Jerry Santos y Macol and Ramon Catoc y Picayo in Criminal Case No. 12193-D for illegal sale of shabu.

Likewise, the conviction of appellant Ramon Catoc y Picayo and the imposition of the penalty of twelve (12) years and one (1) day to fifteen (15) years imprisonment and the fine of P300,000.00 meted out by the trial court with respect to Criminal Case No. 12194-D for illegal possession of shabu, are affirmed.

WHEREFORE, premises considered, the Decision dated 29 November 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 01291, affirming in toto the Decision of the Regional Trial Court of Pasig City, Branch 70, in Criminal Case No. 12193-D and Criminal Case No. 12194-D, is hereby AFFIRMED. No costs.

### **SO ORDERED.**

Ynares-Santiago, (Chairperson) , Austria-Martinez, Azcuna,[\*] and Reyes, JJ., concur.

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[\*] Justice Adolfo S. Azcuna was designated to sit as additional member replacing Justice Antonio Eduardo B. Nachura per Raffle dated 30 October 2007.

[1] Penned by Associate Justice Magdangal M. de Leon with Associate Justices Rebecca de Guia-Salvador and Ramon R. Garcia concurring; rollo, pp. 2-14.

[2] Penned by Judge Pablito M. Rojas; records, pp. 19-26.

[3] SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[4] CA rollo, p. 8.

[5] SEC. 11. Possession of Dangerous Drugs. – x x x

x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

[6] CA rollo, pp. 10-11.

[7] Records, p. 19.

[8] Id. at 24.

[9] Id. at 32.

[10] Id. at 34-35.

[11] Section 22, Rule 119 of the Rules of Court provides:

Sec. 22. Consolidation of trials of related offenses. – Charges for offenses founded on the same facts or forming part of a series of offenses of similar character may be tried jointly at the discretion of the court.

[12] TSN, 2 September 2003.

[13] TSN, 13 October 2003 and 3 December 2003.

[14] In other parts of the Records, SDEU was referred to as Special Drug Enforcement Unit; see Transcript of Stenographic Notes dated 2 September 2003, p. 4, and the Decision of the Regional Trial Court dated 4 May 2005, p. 3 (CA rollo, pp. 19-26).

[15] TSN, 25 May 2004.

[16] TSN, 4 August 2004.

[17] TSN, 29 September 2004.

[18] TSN, 17 November 2004.

[19] TSN, 2 September 2003, p. 4.

[20] Id. at 5-6.

[21] Id. at 20.

[22] Id. at 7.

[23] Exhibit "D" for the prosecution, Records, p. 10; TSN, 2 September 2003, p. 8.

[24] Exhibit "C-1" for the prosecution, Records, p. 7; TSN, 2 September 2003, p. 15.

[25] TSN, 2 September 2003, p. 9.

[26] Exhibit "C-2" for the prosecution, Records, p. 7; TSN, 2 September 2003, p. 15.

[27] TSN, 13 October 2004, p. 6.

[28] TSN, 2 September 2003, p. 10.

[29] Id. at 14.

[30] Id. at 14-15; TSN, 13 October 2004, p. 9.

[31] TSN, 13 October 2004, p. 8.

[32] Records, p. 7.

[33] Id. at 8.

[34] TSN, 25 May 2004, pp. 3-4, 6-8.

[35] Id. at 8.

[36] Id. at 9-10.

[37] Id. at 10.

[38] TSN, 4 August 2004, pp. 3-4.

[39] Id. at 5.

[40] Id. at 6.

[41] Id. at 7-8.

[42] Id. at 9-12.

[43] CA rollo, pp. 31-33.

[44] In the said case, We ruled thus:

While the Fundamental Law requires a mandatory review by the Supreme Court of cases where the penalty imposed is reclusion perpetua, life imprisonment, or death, nowhere, however, has it proscribed an intermediate review. If only to ensure utmost circumspection before the penalty of death, reclusion perpetua or life imprisonment is imposed, the Court now deems it wise and compelling to provide in these cases a review by the Court of Appeals before the case is elevated to the Supreme Court. Where life and liberty are at stake, all possible avenues to determine his guilt or innocence must be accorded an accused, and no care in the evaluation of the facts can ever be overdone. A prior determination by the Court of Appeals on, particularly, the factual issues, would minimize the possibility of an error of judgment. If the Court of Appeals should affirm the penalty of death, reclusion perpetua or life imprisonment, it could then render judgment imposing the corresponding penalty as the circumstances so warrant, refrain from entering judgment and elevate the entire records of the case to the Supreme Court for its final disposition. (G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640, 656). (Emphasis ours).

[45] Rollo, p. 10.

[46] Id. at 13.

[47] Id. at 15-16.

[48] Id. at 18.

[49] Id. at 19-20, 22-23.

[50] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[51] *People v. Padasin*, 445 Phil. 448, 461 (2003).

[52] *People v. Macabalang*, G.R. No. 168694, 27 November 2006, 508 SCRA 282, 293-294.

[53] TSN, 2 September 2003, pp. 11-12.

[54] Records, p. 8.

[55] TSN, 2 September 2003, pp. 4-11.

[56] CA rollo, p. 24.

[57] TSN, 25 May 2004, p. 7, 19; TSN, 4 August 2004, pp. 5-6, 11, 22.

[58] Id. at 8.

[59] Id. at 17.

[60] Id. at 18.

[61] Id. at 9.

[62] Id. at 10.

[63] TSN, 4 August 2004, pp. 7-8.

[64] Rollo, p. 12.

[65] TSN, 17 November 2004, p. 3.

[66] TSN, 4 August 2004, p. 4; TSN, 25 May 2004, p.4.

[67] *People v. Ballesteros*, 349 Phil. 366, 375 (1998).

[68] *People v. Emoy*, 395 Phil. 371, 384 (2000).

[69] *Supra* note 50 at 552, citing *Teodosio v. Court of Appeals*, G.R. No. 124346, 8 June 2004, 431 SCRA 194, 203.

[70] See *Teodosio v. Court of Appeals*, *id.* at 203.

[71] CA rollo, pp. 11-12.

[72] *People v. Ponce*, 395 Phil. 563, 571-572 (2000).

[73] *Id.*

[74] CA rollo, p. 25.

[75] Republic Act No. 9165, Article II, Section 5.

[76] *Id.*, Section 11.

[77] ART. 63. Rules for the application of indivisible penalties.

x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

[78] *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 205.

[79] *Id.*

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