

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO CONCEPCION Y CLEMENTE AND HENRY CONCEPCION Y CLEMENTE, ACCUSED-APPELLANTS.

G.R. No. 178876. June 27, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

On appeal before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01808 dated 18 May 2007 which affirmed in toto the decision dated 13 December 2005[2] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 78, convicting accused-appellants Alfredo Concepcion y Clemente and Henry Concepcion y Clemente of Violation of Section 5,[3] Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellants, together with Hegino dela Cruz, were charged before the RTC of Malolos, Bulacan, with Violation of Section 5, Article II of Republic Act No. 9165 under the following information:

That on or about the 27[th] day of November, 2002, in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, without authority of law and legal justification, in conspiracy with one another, did then and there wilfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drugs consisting of three (3) heat-sealed transparent plastic sachets weighing 5.080 grams, 4.446 grams and 4.362 grams, respectively.[4]

When arraigned, appellants and accused Dela Cruz pleaded not guilty to the crime charged. [5]

The prosecution presented two witnesses: Police Officer (PO2) Peter Sistemio[6] and PO2 Arlan Arojado,[7] both regular members of the Philippine National Police (PNP) and assigned with the Philippine Drug Enforcement Agency (PDEA), Regional Office No. 3, Bulacan Provincial Office, Barangay Saluysoy, Meycauayan, Bulacan.

The version of the prosecution is as follows:

Sometime in the afternoon of 26 November 2002, a confidential informant reported to Senior Police Officer (SPO)1 Buenaventura R. Lopez at the PDEA, Regional Office No. 3, Bulacan Provincial Office, Barangay Saluysoy, Meycauayan, Bulacan, that an alias Totoy was engaged in selling drugs, particularly shabu, in Barangay Guyong, Sta. Maria, Bulacan. SPO1 Lopez instructed the confidential agent to set a drug deal with alias Totoy and order ten (10) grams of shabu. The confidential informant returned and confirmed that the delivery of the 10 grams of shabu would be made in Barangay Guyong at 2:00 a.m. of 27 November 2002. A buy-bust operation was planned and a team formed. The team was composed of SPO1 Lopez as team leader; PO2 Sistemio as the poseur-buyer; and PO2 Arojado, PO2 Navarette and PO2 Kho as back-up operatives.

The team, together with the confidential informant, proceeded to Barangay Guyong and arrived thereat at 1:15 a.m. of 27 November 2002. PO2 Sistemio and the confidential informant alighted from their vehicle and

proceeded to a waiting shed along the highway. The rest of the team positioned themselves ten to twenty meters away in their parked vehicles. At around 2:00 a.m. a violet Hyundai van with plate number XAM-592 arrived with appellants and accused Dela Cruz on board. Dela Cruz was driving, while appellant Alfredo Concepcion, a.k.a. Totoy, was seated beside him and appellant Henry was at the back. The confidential informant introduced PO2 Sistemio to Totoy who asked the latter how much shabu he would buy. PO2 Sistemio replied he would buy two plastic packs of shabu equivalent to ten grams. Totoy answered that each pack was worth P6,000.00 and got two plastic packs from the van's compartment and gave them to PO2 Sistemio. Appellant Henry Concepcion said, "Mura pa yan, direkta kasi kami." [8] PO2 Sistemio also heard someone say, "Magandang klase yang stuff na yan." [9] After receiving the two plastic packs, PO2 Sistemio lit a cigarette, the pre-arranged signal for the other members of the buy-bust team to approach and arrest the culprits. The boodle money that PO2 Sistemio had with him was no longer given to Totoy.

Upon seeing PO2 Sistemio light a cigarette, the other team members blocked the vehicle. PO2 Arojado was ordered by PO2 Sistemio to search the van's glove compartment where the former recovered a medium-sized plastic sachet. Appellants and accused Dela Cruz were apprehended and brought to the PDEA office. The two plastic sachets [10] given by appellant Alfredo Concepcion to PO2 Sistemio, and the other one [11] recovered in the glove compartment, were marked with the initials "P.S. A," "P.S. A-1" and "A.G.A.," respectively. On the same day, per request [12] of SPO1 Lopez, these plastic sachets containing white crystalline substance were sent to the PNP Provincial Crime Laboratory Office 3, Bulacan Provincial Office, Camp Alejo Santos, Malolos, Bulacan, for laboratory examination to determine the presence of dangerous drugs. After a qualitative examination was conducted on the specimens, Police Inspector Nellson C. Sta. Maria, Forensic Chemical Officer, issued Chemistry Report No. D-700-2002 with a conclusion that said specimens contained methylamphetamine hydrochloride (shabu), a dangerous drug. [13]

The testimony of SPO1 Buenaventura Lopez was dispensed with due to the admission by the defense that his testimony would merely corroborate the testimony of PO2 Arojado, and that the alleged buy-bust operation was coordinated through cellular phone, but the same was not duly recorded before Barangays Guyong and Poblacion per certifications issued by the Barangay Captains of said barangays. [14] With the defense's admission of the existence, due execution and genuineness of the request for laboratory examination, the Chemistry Report and specimens submitted, the testimony of Police Inspector Nellson C. Sta. Maria was also dispensed with.

After the prosecution formally offered its evidence, [15] appellants and accused Dela Cruz, with leave of court, filed their respective demurrers to evidence, [16] which the trial court denied on 1 March 2005 for lack of merit. [17]

The defense presented three witnesses: (1) appellant Alfredo Concepcion; (2) Julieta dela Rosa, appellant Alfredo's spouse and appellant Henry's sister-in-law; and (3) accused Hegino dela Cruz.

Appellant Alfredo Concepcion disclosed that appellant Henry Concepcion is his brother and accused Hegino dela Cruz is his brother's friend. He narrated that at around 8:00 to 9:00 p.m. of 26 November 2002, he was in his house at RG Nicolas, Poblacion, Sta. Maria, Bulacan, when he, together with appellant Henry Concepcion, Hegino dela Cruz, Armando Cabral and Leopoldo Igueza, was arrested by elements of the PDEA. They were about to rest when they were arrested and handcuffed. PDEA operatives, whom he later came to know when the instant case was filed, entered his house and stayed for more or less thirty minutes. They were loaded into the vehicle of accused Hegino dela Cruz. His wife and the wife of appellant Henry were present when he was arrested. They were then brought to the PDEA headquarters and were told that they had shabu.

Appellant Alfredo Concepcion said he had no knowledge about the police officers' allegation that he and his

co-accused sold shabu to a poseur-buyer in Barangay Guyong, Sta. Maria, Bulacan. At the time of the supposed sale of shabu, he claims they were already at the PDEA headquarters. He denied he had shabu and that the police officers recovered nothing from his house. He was informed by his wife that a cell phone was missing in their house when the latter went to the PDEA headquarters. Appellant Alfredo added that upon his instruction, his wife reported his alleged arrest in his home before the Office of the Punong Barangay of Barangays Guyong and Poblacion.[18]

Julieta dela Rosa testified that between 8:00 p.m. and 9:00 p.m. of 26 November 2002, she was inside her house together with her brother-in-law (appellant Henry) and sister-in-law. Her husband, appellant Alfredo Concepcion, was outside with his friends (Armando Cabral and Leopoldo Abreza[19]) waiting for the vehicle of her other brother-in-law (Roberto Concepcion) which vehicle Alfredo would use in accompanying his friends to Manila. While she was watching television inside her house, she heard a commotion outside and when she opened a window, she saw her husband, accused Hegino dela Cruz, Armando and Leopoldo already handcuffed and being loaded into a van owned by accused Hegino. She went out and asked the person who handcuffed her husband the reason for this. She learned that the person who handcuffed her husband was a member of the PDEA. She was told to go inside the house and not to make any noise. She went inside to call her sister-in-law and when she went out again, her husband and all the others were no longer there.

Julieta followed them to the office of the PDEA in Saluysoy St., Meycauayan, Bulacan. SPO1 Buenaventura Lopez told her that a case was filed against her husband because they recovered something from him which she said was not true. Thereafter, she went home and proceeded to the barangay hall of Poblacion to report that her husband and his companions were arrested without anything being recovered from them.[20] She then went to the police station of Sta. Maria, Bulacan, to check if the PDEA coordinated with them. She claims a certification[21] was issued showing that there was no coordination made by PDEA. In connection with the instant case, she and her sister-in-law, Anna Juan, who is the wife of appellant Henry Concepcion, executed a sworn statement.[22] Lastly, she explained she did not know what happened outside where her husband and his friends were apprehended.

Next to take the stand for the defense was accused Hegino dela Cruz who testified that in the late afternoon of 26 November 2002, he was in his house at Lalakhan, Sta. Maria, Bulacan. While resting, someone informed him that appellant Henry Concepcion called and was renting his Hyundai van with plate number XAM-592 registered in his wife's name. He then proceeded to the house of Henry at RG Nicolas St. (formerly Calderon), Sta. Maria, Bulacan, and arrived thereat before 8:00 p.m. He parked the van in front of Henry's house. While seated at the driver's seat, he talked with Henry who told him, "Luluwas kami." Henry was standing beside the van while Alfredo Concepcion was seated at the side with two companions. While he was conversing with Henry, a vehicle suddenly arrived. One of its passengers told him to alight and face the van, while the other passengers went to the house of Alfredo Concepcion. He was frisked and was arrested without being informed of the reason therefor. He, together with appellants Concepcion, was brought to Saluysoy St., Meycauayan, Bulacan. In going to said place, they rode his van, which was driven by a PDEA member. Upon reaching the place, he called his family and came to know that the PDEA was filing a drug case against him and was told that there was shabu in the compartment of the van. He denied he had illegal drugs and that he was the only one using the van. Prior to the incident, he had not been charged with any offense in any other court.

On 13 December 2005, the trial court rendered its decision convicting appellants Alfredo and Henry Concepcion with, but acquitting accused Hegino dela Cruz of, the crime charged. The decretal portion of the decision reads:

WHEREFORE, the foregoing considered, this Court finds accused Alfredo Concepcion y Clemente and Henry Concepcion y Clemente GUILTY beyond reasonable doubt of the offense of Violation of Section 5, Article II

of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences EACH of them to suffer the penalty of LIFE IMPRISONMENT AND A FINE OF P500,000.00.

Accused Hegino dela Cruz is hereby ACQUITTED of the offense charged for insufficiency of evidence. Accordingly, the Jail Warden of the Bulacan Provincial Jail is hereby DIRECTED to release accused Hegino dela Cruz from detention unless he is being held for some other lawful cause.

In the service of their sentence, accused Alfredo Concepcion and Henry Concepcion who are detention prisoners shall be credited with the entire period of their preventive imprisonment.

The drugs subject matter of this case is hereby forfeited in favor of the government. The Branch Clerk of Court is hereby directed to turn over the same to the Dangerous Drugs Board for proper disposal thereof.[23]

In convicting the brothers Concepcion, the trial court gave credence to the testimonies of PO2 Sistemio and PO2 Arojada when they positively identified appellant Alfredo Concepcion as the one from whom they bought and got the sachets of shabu. Also from their testimonies, the trial court found that appellant Henry Concepcion conspired with appellant Alfredo in trading the dangerous drugs for which they were charged. Appellant Henry's statement "Mura pa yan, direkta kasi kami" when he tried to persuade the poseur-buyer to accept the price of the drugs when the buy-bust transaction was taking place, convinced the trial court of his participation in the offense. The trial court further applied in favor of the PDEA agents the presumption of regularity in the performance of official duty. As regards accused Dela Cruz, the trial court was not convinced of his guilt. It explained that mere presence in the scene of the crime was not sufficient to convict in light of PO2 Sistemio's statement that he was not certain if it was accused dela Cruz who uttered "Magandang klase yang stuff na yan."

On 15 December 2005, appellants Alfredo and Henry Concepcion filed a Notice of Appeal.[24] In an Order dated 3 January 2006, the trial court approved the notice of appeal and directed the Branch Clerk of Court to immediately transmit the entire records of the case to the Court of Appeals pursuant to Administrative Circular No. 20-2005. [25]

In its decision dated 18 May 2007, the Court of Appeals totally agreed with the trial court. It disposed of the case as follows:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Decision dated December 13, 2005 of the Regional Trial Court of Malolos City, Bulacan, Branch 78 in Criminal Case No. 3328-M-2002 is hereby AFFIRMED and UPHELD.

With costs against the accused-appellants.[26]

On 31 May 2007, appellants Alfredo and Henry Concepcion filed a Notice of Appeal with manifestation were terminating the legal services of their private counsel and praying that they be represented by the Public Attorney's Office (PAO).[27] On 15 June 2007, the Court of Appeals gave due course to the Notice of Appeal and ordered the forwarding of the records of the case to the Supreme Court. The appellate court appointed the PAO to represent the appellants.[28]

With the elevation of the records to the Court and the acceptance of the appeal, the parties were required to file their respective supplemental briefs, if they so desired, within thirty days from notice. [29] The parties manifested that they were not filing supplemental briefs, arguing that the relevant issues of the case had been discussed in their respective briefs filed before the Court of Appeals.

Accused-appellants make the following assignment of errors:

A

THE HONORABLE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THE PROSECUTION WAS NOT ABLE TO ESTABLISH THE GUILT OF THE ACCUSED- APPELLANTS BEYOND REASONABLE DOUBT.

B

THE HONORABLE TRIAL COURT PATENTLY ERRED IN DEVIATING FROM THE ESTABLISHED RULE THAT THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY BY POLICE OFFICERS SHOULD NOT BY ITSELF PREVAIL OVER THE PRESUMPTION OF INNOCENCE AND THE CONSTITUTIONALLY PROTECTED RIGHTS OF THE ACCUSED-APPELLANTS.

C

THE HONORABLE TRIAL COURT GRAVELY ERRED IN CONVICTING ACCUSED- APPELLANTS NOT ON THE BASIS OF THE STRENGTH OF THE PROSECUTION'S EVIDENCE BUT RATHER ON THE WEAKNESS OF THE EVIDENCE FOR THE DEFENSE.

D

THE HONORABLE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT THERE ARE SITUATIONS WHERE AN ACCUSED CAN HAVE NO OTHER DEFENSE BUT A DENIAL OF COMPLICITY IN THE OFFENSE CHARGED, AS THAT COULD BE THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH.[30]

Appellants argue that the alleged buy-bust operation was not satisfactorily proven and was of doubtful legitimacy because of the failure of the prosecution to present and offer in evidence the physical inventory and the photograph of the evidence confiscated as required by Section 21, [31] Article II of Republic Act No. 9165, and that said operation was not coordinated with the PDEA.

After going over the evidence on record, we find that there, indeed, was a buy-bust operation involving appellants. The prosecution's failure to submit in evidence the required physical inventory of the seized drugs and the photograph pursuant to Section 21, Article II of Republic Act No. 9165 will not exonerate appellants. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.[32] In the instant case, we find the integrity of the drugs seized intact. The chain of custody of the drugs subject matter of the case was shown not to have been broken. After seizure of the drugs from appellants' possession, PO2 Sistemio and PO2 Arojada marked them with their initials and turned them over to SPO1 Lopez who, on the same day, sent these plastic sachets containing white crystalline substance to PNP Provincial Crime Laboratory Office 3, Bulacan Provincial Office, Camp Alejo Santos, Malolos, Bulacan, for laboratory examination to determine the presence of dangerous drugs. After a qualitative examination conducted on the specimens, Police Inspector Nellson C. Sta. Maria, Forensic Chemical Officer, concluded that the white crystalline substance was positive for methylamphetamine hydrochloride (shabu), a dangerous drug. There can be no doubt that the drugs seized from appellants were the same ones examined in the crime laboratory. This statement is bolstered by the defense's admission of the existence, due execution and genuineness of the request for laboratory examination, the Chemistry Report and specimens submitted. We agree with the Court of Appeals when it said:

While it is true that counsel for appellants, during the cross-examination of PO2 Sistemio, questioned the latter on non-compliance with Sec. 21 of R.A. No. 9165 regarding the immediate physical inventory and

photographing of the seized dangerous drug, there is no showing that the integrity and evidentiary value of the confiscated shabu from appellants at the time of the buy-bust had not been properly preserved by the apprehending team. PO2 Sistemio explained that the seized substance contained in three properly marked plastic sachets were sent for chemical analysis to the PNP Crime Laboratory at Camp Alejo Santos in Malolos City, Bulacan. Significantly, such an objection was not reiterated by the appellants in their Demurrer to Evidence which was focused merely on the alleged inconsistencies in the narration of the details of the buy-bust by prosecution witnesses PO2 Sistemio and PO2 Arojado, as well as non-presentation of the marked boodle money which supposedly disproves the sale.[33]

Appellants' argument that the buy-bust operation was not coordinated with the PDEA is specious. From the testimonies of the defense witnesses, it is clear that they all know that the buy-bust operation was conducted by the elements of the PDEA. It is thus nonsensical for the defense to argue that the operation was not coordinated with the PDEA if it was the PDEA itself that conducted the entrapment. Moreover, said argument is belied by the defense's admission that the PDEA coordinated with Barangays Guyong and Poblacion via cellphone regarding the conduct of the buy-bust operation.

Appellants' contention that they were not apprised of their constitutional rights upon their arrest cannot lead to their acquittal. The arresting officers' alleged failure to inform them of their Miranda rights or the nature of their arrest should have been raised before arraignment. It is too late in the day for appellants to raise these alleged illegalities after a valid information has been filed, the accused arraigned, trial commenced and completed, and a judgment of conviction rendered.[34]

Appellants claim that the PDEA, aside from its supposed non-compliance with Republic Act No. 9165, failed to prove and execute certain matters that would show that a proper buy-bust operation was conducted. The alleged requirements for a proper buy-bust which the PDEA did not undertake include the following: (1) the prosecution failed to offer proof that appellants were known drug traffickers; (2) no surveillance was done to verify appellants' illicit activities; (3) the serial numbers of the boodle money were not jotted down in the log/blotter book during the planning and execution of the buy-bust operation; and (4) the boodle money prepared was grossly inadequate (P6,000.00) for the price of two plastic packs of shabu equivalent to 10 grams, as one pack commands a price of P6,000.00, which fact was known by the entrapping officers. The absence of all these, appellants say, shows that they are innocent of the charge.

We find their claim untenable. In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in the illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity.[35] Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[36]

Jurisprudence has firmly entrenched the following as elements in the crime of illegal sale of prohibited drugs: (1) the accused sold and delivered a prohibited drug to another, and (2) he knew that what he had sold and delivered was a dangerous drug.[37] These two elements were clearly established in this case. The records show that appellants sold and delivered the shabu to the PDEA agent posing as a poseur-buyer. The plastic sachets containing white crystalline substance, which were seized and were found positive for methylamphetamine hydrochloride (shabu), a dangerous drug, were identified and offered in evidence. There is also no question that appellants knew that what they were selling and delivering was shabu, a dangerous drug.

After reviewing the evidence on record, we find the testimonies of the poseur-buyer and his back-up, as well as the dangerous drug seized from appellants, more than sufficient to prove the crime charged. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the

assessment of the trial court, which had the distinct advantage of observing the conduct and demeanor of the witnesses during trial. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility 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.[38]

The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[39] Finding no reason to deviate from the findings of both the trial court and the Court of Appeals, we uphold their findings.

Appellants' assertion that the prosecution should have offered proof showing that they are drug traffickers and are notorious in the drug trade as proof of a proper buy-bust operation, is without basis. This Court does not know of any law or jurisprudence that requires such evidence before it can be held that there was a legal buy-bust operation.

Appellants likewise insist that surveillance should have been conducted to verify their illicit activities.

We do not agree. Settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers.[40] A prior surveillance, much less a lengthy one, is not necessary especially where the police operatives are accompanied by their informant during the entrapment.[41] Flexibility is a trait of good police work.[42] In the instant case, the entrapment or buy-bust operation was conducted without the necessity of any prior surveillance because the confidential informant, who was previously tasked by the buy-bust team leader to order dangerous drugs from appellant Alfredo Concepcion, accompanied the team to the person who was peddling the dangerous drugs.

The failure of the PDEA operatives to record the boodle money will not render the buy-bust operation illegal. The recording of marked money used in a buy-bust operation is not one of the elements for the prosecution of sale of illegal drugs. The recording or non-recording thereof in an official record will not necessarily lead to an acquittal as long as the sale of the prohibited drug is adequately proven.[43] In the case at bar, PO2 Sistemio, the poseur buyer and PO2 Arojado testified as to how the shabu subject of the case was seized from appellants. Settled is the rule that in the prosecution for the sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drugs is adequately proven and the drug subject of the transaction is presented before the court. Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation. [44] What is material to a 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 the corpus delicti as evidence.[45] The prosecution duly established both in this case.

Appellants claim that the boodle money prepared by the buy-bust team was grossly insufficient. We find such claim baseless. The Court, after examining the transcript of stenographic notes containing the testimonies of the prosecution witnesses, did not find the exact amount of boodle money that was prepared. What is clear, though, is the fact that the boodle money was not given to appellant Alfredo Concepcion because of the apprehension that followed after the poseur-buyer signaled that the transaction had already been consummated.

Appellants' argument that the poseur-buyer was not able to strike a deal or a sale because one of the elements of the crime charged was wanting - payment by the poseur-buyer for the thing sold or receipt of the marked money by the seller of the dangerous drugs - is erroneous. As above-mentioned, the transaction between the poseur-buyer and appellants was already consummated. There is no rule of law which requires that in buy-bust operations there

must be a simultaneous exchange of the marked money and the prohibited drug between the poseur-buyer and the pusher.[46]

It must be emphasized that appellants were charged with selling, trading, delivering, giving away, dispatching in transit and transporting dangerous drugs under Section 5, Article II of Republic Act No. 9165. The charge was not limited to selling. Said section punishes not only the sale but also the mere act of delivery of prohibited drugs after the offer to buy by the entrapping officer has been accepted by the seller. In the distribution of prohibited drugs, the payment of any consideration is immaterial. The mere act of distributing the prohibited drugs to others is in itself a punishable offense.[47] In the case at bar, the shabu was delivered to the poseur-buyer after appellants agreed on the price of the contraband.

PO2 Sistemio, the poseur-buyer, failed to give the boodle money to appellant Alfredo as payment for the shabu. However, he satisfactorily explained why he was not able to do so. He testified that there was boodle money with him during the operation to pay for the sale of the drugs, but he was unable to utilize the same because he immediately performed the pre-arranged signal alerting the rest of the buy-bust team that he had received the drugs.

Appellants deny the existence of the buy-bust operation and cry frame-up.

We are not swayed. In the case at bar, the evidence clearly shows that appellants were involved in the buy-bust operation. Having been caught in flagrante delicto, appellants Alfredo and Henry's participation cannot be doubted. Against the positive testimonies of the prosecution witnesses, appellants' plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[48] Frame-up, like alibi, is generally viewed with caution by this Court, because it is easy to contrive and difficult to disprove. Moreover, it is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.[49] For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.[50]

We uphold the presumption of regularity in the performance of official duties. The presumption remains because the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive. The presumption was not overcome as there was no evidence showing that PO2 Sistemio and PO2 Arojado were impelled by improper motive.

The testimony of defense witness Julieta dela Rosa does not convince us. As the wife of appellant Alfredo and sister-in-law of appellant Henry, we find her not to be credible. Her testimony is suspect and unsubstantiated. In her direct testimony, she said her husband, appellant Alfredo, was outside their house with his friends.[51] However, such statement was belied by Alfredo himself who said he was inside his house when he was allegedly arrested by members of the PDEA. Such inconsistency as to where appellant Alfredo was when the alleged unlawful arrest was made, further diminishes the credibility of the defense witnesses.

Undeniably, appellants are guilty of sale and delivery of shabu, a dangerous drug. It was duly established that there was a conspiracy between them to sell and deliver dangerous drugs.

An examination of the information reveals that appellants were charged with selling, trading, delivering, giving away, dispatching in transit and transporting dangerous drugs consisting of three (3) heat-sealed transparent plastic sachets weighing 5.080 grams, 4.446 grams and 4.362 grams, respectively. However, from the testimonies of the prosecution witnesses, only two sachets[52] were sold and delivered to the poseur-buyer. The third sachet[53] was not sold or delivered but was found by PO2 Arojado in the glove compartment of the Hyundai van.

From the foregoing, it is thus clear that appellants could have been charged with possession of dangerous drugs[54] on account of the third sachet. This was not done. They cannot be convicted of possession of dangerous drugs, though proved, without being properly charged therefor. The error on the part of the public prosecutor notwithstanding, the appellants are still guilty, as charged in the information, of selling and delivering the two sachets to the poseur-buyer.

We now go to the penalty to be imposed.

The court a quo imposed on each of the appellants the penalty of life imprisonment and a fine of P500,000.00 which the Court of Appeals sustained.

Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of P500,000.00 to P10,000,000.00.[55] The statute, in prescribing the range of penalties imposable, does not concern itself with the amount of dangerous drug sold by an accused.[56] With the effectivity, however, of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed. As a consequence, the penalty to be meted to appellants shall only be life imprisonment and fine. The penalty imposed by the court a quo being in accordance with law, and which the appellate court upheld, this Court similarly sustains the same.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision of the Court of Appeals in in CA-G.R. CR-H.C. No. 01808 dated 18 May 2007 which affirmed in toto the Decision of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 78, convicting appellants Alfredo Concepcion y Clemente and Henry Concepcion y Clemente of violation of Section 5, Article II of Republic Act No. 9165, is hereby AFFIRMED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring. CA r ollo, pp. 157-178.

[2] Records, pp. 368-380.

[3] Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

[4] Records, p. 2.

[5] Appellants were arraigned on 12 December 2002 while accused Dela Cruz was arraigned on 3 April 2003. Records, pp. 29 and 67.

[6] TSN, 27 February 2003, 3 April 2003, 7 July 2003 and 1 September 2003.

[7] TSN, 1 December 2003, 15 December 2003 and 15 March 2004.

[8] TSN, 27 February 2003, p. 10.

[9] Id. at 11.

[10] Exhs. B and B-1.

- [11] Exh. B-2.
- [12] Exh. A; records, p. 365.
- [13] Exh. C; id. at 366.
- [14] Records, p. 134.
- [15] Id. at 141.
- [16] Id. at 294-301, 311-318.
- [17] Id. at 336.
- [18] Exhibits 1 and 2; records, pp. 355-356.
- [19] Also referred to as Igueza.
- [20] Exh. 2; records, p. 356.
- [21] Exh. 4; id. at 358.
- [22] Exh. 5; id. at 359.
- [23] Records, pp. 379-380.
- [24] Id. at 382.
- [25] Id. at 384.
- [26] CA rollo, p. 177.
- [27] Id. at 181-182.
- [28] Id. at 183.
- [29] Rollo, p. 26.
- [30] CA rollo, pp. 56-57.
- [31] SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.
- [32] *People v. Del Monte*, G.R. No. 179940, 23 April 2008.
- [33] CA rollo, p. 176.
- [34] *People v. Yang*, 467 Phil. 492, 509 (2004).
- [35] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 552.

- [36] *People v. Del Mundo*, G.R. No. 169141, 6 December 2006, 510 SCRA 554, 565-566.
- [37] *People v. Pacis*, 434 Phil. 148, 159 (2002).
- [38] *People v. Julian-Fernandez*, 423 Phil. 895, 910 (2001).
- [39] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.
- [40] *People v. Li Yin Chu*, 467 Phil. 582, 597 (2004).
- [41] *People v. Gonzales*, 430 Phil. 504, 514 (2002).
- [42] *People v. Cadley*, 469 Phil. 515, 525 (2004).
- [43] *People v. Suson*, G.R. No. 152848, 12 July 2006, 494 SCRA 691, 705.
- [44] *People v. Astudillo*, 440 Phil. 203, 224 (2002).
- [45] *People v. Chen Tiz Chang*, 382 Phil. 669, 684 (2000).
- [46] *People v. Cadley*, *supra* note 42.
- [47] *People v. Rodriguez*, 429 Phil. 359, 370 (2002).
- [48] *People v. Sy*, G.R. No. 171397, 27 September 2006, 503 SCRA 772, 783.
- [49] *People v. Eugenio*, 443 Phil. 411, 419 (2003).
- [50] *People v. Zheng Bai Hui*, 393 Phil. 68, 138 (2000).
- [51] TSN, 19 July 2005, p. 6.
- [52] Exhs. B and B-1.
- [53] Exh. B-2.
- [54] Section 11, Article II of Republic Act No. 9165.
- [55] 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.
- [56] *People v. Quiaoit, Jr.*, G.R. No. 175222, 27 July 2007, 528 SCRA 474, 489.

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