GWYN QUINICOT Y CURATIVO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

G.R. No. 179700. June 22, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is an appeal which seeks the reversal of the Decision[1] of the Court of Appeals dated 26 October 2006 in CA-G.R. CR No. 27835 affirming in toto the Joint Judgment[2] of the Regional Trial Court (RTC) of Negros Oriental, Branch 30, Dumaguete City, in Criminal Cases No. 14855-14856, and its Resolution[3] dated 6 September 2007 denying petitioner Gwyn C. Quinicot's Motion for Reconsideration.

Two informations both dated 21 September 2000 were filed before the RTC of Negros Oriental charging petitioner Quinicot with violation of Sections 16[4] and 15,[5] respectively, of Republic Act No. 6425, otherwise known as The Dangerous Drugs Act of 1972. The accusatory portions of the informations read:

Crim. Case No. 14855

> That on or about the 21[st] day of September, 2000 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there, wilfully, unlawfully and feloniously, have and keep in his possession two (2) transparent plastic sachets containing Methamphetamine Hydrochloride also known as shabu weighing more or less 5.1 grams.[6]

> Crim. Case No. 14856
> That on or about the 21[st] day of September, 2000 in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being then authorized by law, did then and there wilfully, unlawfully and feloniously, sell and deliver to a poseur buyer (1) small transparent plastic sachet containing suspected Methamphetamine hydrochloride also known as shabu weighing more or less 0.2 grams.[7]

When arraigned, petitioner, assisted by counsel de parte, pleaded "Not Gulity" to the crimes charged. After the pre-trial conference, the cases were tried jointly.

The prosecution presented three witnesses: (1) Police Officer (PO) 1 Domingo Marchan, member of the Philippine National Police (PNP) assigned at the 701[st] Criminal Investigation and Detection Team; (2) PO2 Allen June Germodo, member of the PNP assigned at the Provincial Narcotics Office of Negros Oriental; and (3) Police Inspector (P/Insp.) Josephine S. Llena, Forensic Chemist, PNP Crime Laboratory. From their collective testimonies, the version of the prosecution is as follows:

At around 11:20 a.m. of 21 September 2000, a confidential informant/agent called the petitioner by phone. Thereafter, PO1 Marchan talked to petitioner and informed the latter that he was buying P300.00 worth of shabu. PO1 Marchan was casually introduced to the petitioner as Dondon. A team was formed by team leader Police Senior Inspector (PSI) Crisaleo Tolentino to conduct a buy-bust operation against petitioner. PO1 Marchan was designated as the poseur-buyer, while the other members who served as back-ups were PO3 Manuel Sanchez,

Police Inspector Rolando Caña and PO2 Allen Germodo. PSI Tolentino gave PO1 Marchan three one- hundred peso bills[8] which he marked with his initials.[9]

At around 12:20 p.m., they went to Chin Loong Restaurant and conducted the buy-bust operation. PO2 Germodo was positioned in front of the restaurant, five to ten meters away from PO1 Marchan and petitioner. PO1 Marchan saw petitioner and a woman sitting on a stool in the bar. PO1 Marchan approached petitioner and asked him if he had shabu worth P300.00. Petitioner answered in the affirmative. PO1 Marchan gave the P300.00 marked money, and in return, petitioner gave him a plastic sachet[10] containing a white crystalline substance. When PO1 Marchan executed the pre-arranged signal - touching his hat - PO2 Germodo rushed towards petitioner and PO1 Marchan and identified themselves as police officers. Petitioner was informed he violated the law on selling shabu. PO2 Germodo bodily searched petitioner and recovered two plastic sachets[11] from the brown belt purse of the latter. He likewise recovered from petitioner the marked money, a disposable lighter, and a tooter.[12] The petitioner was brought to the police station. PO1 Marchan issued a receipt[13] for the items recovered from the him.

Per request[14] of PSI Tolentino, the three plastic sachets containing white crystalline substance were sent to the Negros Oriental Provincial Crime Laboratory for forensic laboratory examination. P/Insp. Llena conducted the chemical examination on the following: (1) specimen A[15] with a weight of 0.119 gram; (2) specimen B[16] with a weight of 2.1832 grams; and (3) specimen C[17] with a weight of 2.6355 grams. The results as contained in Chemistry Report No. D-146-2000[18] showed that the specimens contained methylamphetamine hydrochloride.

PO1 Marchan disclosed that prior to 21 September 2000, on 19 September at around 5:00 p.m., he first saw petitioner at Music Box and offered to buy from the latter shabu without specifying the amount and quantity. Petitioner did not give him shabu, so he (PO1 Marchan) left the place, as he was only instructed to familiarize himself with petitioner's physical features and voice. He added he could not reveal the identity of the informant in court, because it would endanger the life of the latter.

For the defense, Joel D. Patola, a Minister of the Philippine General Council of the Assemblies of God, and the petitioner, an employee of the Department of Public Works and Highways (DPWH), took the stand.

Petitioner alleges that no buy-bust operation occurred and that the evidence - shabu - allegedly confiscated from him was planted evidence.

Petitioner narrated that at around 10:00 a.m. of 21 September 2000, he was at Chin Loong Restaurant ordering pansit and buttered chicken that he would take out for lunch. While waiting for his order, he saw a certain Narvic Pleider and one Orlyn taking their snacks. Orlyn approached petitioner and offered to pawn a diver's watch to him which the latter declined, saying he had no money. When he was informed by the waiter that his order would still take some time to prepare, he rode his motorcycle and went to St. Paul to fetch his son. He brought his son to the house of his parents-in-law at Purok Kalubihan, Daro, Dumaguete City.

At 11:45 a.m., he went back to Chin Loong Restaurant to get his order. He ordered siopao and Coke and asked for the chit. He sat at the outdoor bar and saw Joel Patola taking his snack. When the waiter served the siopao, Orlyn, together with two other men, approached him. Orlyn asked him if he knew someone who was selling shabu, and he replied that he did not know anyone, and that he had no time because he was in a hurry. The two men, who turned out to be police officers in civilian attire, forced him to go with them. No warrant of arrest or search warrant was presented. He was forced to ride a pedicab and was bought to the police station.

At the police station, he was brought to the Office of the Central Intelligence and Detection Group located at the

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back of the station. He was made to sit on a chair with Narvic, PO1 Marchan and PO2 Germodo surrounding him. While the two police officers were in the office of PSI Tolentino, Narvic told him to settle the matter for P50,000.00. He asked Narvic what settlement he was talking about, then told him the latter had no money and would not give the amount because he had not committed anything wrong. When PO1 Marchan came out, petitioner asked permission to call his parents. He requested his parents to come to the police station, and they arrived at 1:30 p.m. He informed his father of what happened to him and what Narvic told him regarding the settlement. His father got mad, because he knew Narvic as the one who framed him in a prior case. His father was approached by Narvic, who talked about the settlement. His father got angry and left. When his parents were gone, Narvic asked him if they would settle before 5:00 p.m.; otherwise, a case would be filed against him.

At 5:00 p.m., petitioner's parents came back with Atty. Rommel Erames, who told them to let the police file the case. At 6:00 p.m., an inquest proceeding was conducted before the Office of the City Prosecutor. The shabu, wallet, tube[19] and other paraphernalia were presented. During the inquest proceedings, he knew that the police had planted the shabu. He denied possession of the shabu and ownership of the wallet. He likewise denied selling shabu to Narvic or to Orlyn.

Petitioner claimed that Orlyn was the best friend of his sister, while he knew Narvic to be an informer of the Presidential Anti Organized Crime headed by a certain Captain Macabali. He alleged that Narvic once gave him money to buy shabu from a certain Ampil, and for that he was arrested on 19 March 1999 at Calindagan for selling shabu. He said he was acquitted in said case for lack of evidence.

Petitioner explained he did not call the attention of Joel Patola when he was forced to board the pedicab, because he was afraid. He said he did not file a complaint against the two police officers who arrested him and that, prior to 21 September 2000, he did not know said police officers and had no misunderstanding or quarrel with them.

Joel Patola[20] narrated that at noon of 21 September 2000, he was at the Chin Loong Restaurant eating snacks at the outdoor bar. He saw petitioner arrive and sit one and a half meters away from him. He saw a woman approach petitioner, and the two conversed. Two men sat beside the woman. After three to five minutes of conversation, petitioner was arrested. Patola said he wondered why petitioner was arrested when he was just sitting and eating. He did not see petitioner give anything to the lady. He even saw his former classmate, PSI Tolentino, who joined the two policemen in hailing a pedicab. Petitioner was forced to ride in the pedicab with the two policemen. He claimed he testified voluntarily and no one requested him to do so. Patola claimed that when he was on his way to his office, he saw petitioner in court and told him he would testify.

In its Joint Judgment dated 6 August 2003, the trial court found petitioner guilty as charged. The dispositive portion of the decision reads:

> WHEREFORE, finding the accused Gwyn Quinicot y Curativo guilty beyond reasonable doubt of the crime of illegal possession of shabu in Criminal Case No. 14855 in violation of Section 16, Article III, Republic Act No. 6425, as amended, and of the offense of illegal selling of shabu (sic) Criminal Case No. 14856 in violation of Section 15, Article III, Republic Act No. 6425, as amended, there being no mitigating or aggravating circumstance, applying the Indeterminate Sentence Law, he is hereby sentenced to suffer in each case imprisonment ranging from a minimum of six (6) months and one (1) day of arresto mayor up to four (4) years and two (2) months of prision correc(c)ional as maximum penalty.
>
> All the aforestated dangerous drugs subject matter of these cases are hereby declared forfeited in favor of the government to be disposed in accordance with law.
>
> Costs against the accused.[21]

The trial court found petitioner to have violated Sections 15 and 16 of Republic Act No. 6425, as amended, when

he sold one plastic sachet containing .0119 gram of methamphetamine hydrochloride to poseur-buyer PO1 Marchan; and that PO2 Germodo recovered from petitioner, inter alia, the marked money used in the buy-bust operation amounting to P300.00 and two more plastic sachets containing 2.1832 grams and 2.6355 grams of methamphetamine hydrochloride (shabu).

In convicting petitioner, the trial court gave more credence to the testimonies of the prosecution witnesses and upheld the buy-bust operation conducted against petitioner. The defense of frame-up invoked by petitioner was not believed by the trial court.

Aggrieved with the decision, petitioner appealed his conviction to the Court of Appeals assigning as sole error the following:

> THE LOWER COURT GRAVELY ERRED IN CONVICTING ACCUSED-APPELLANT ON THE GROUND THAT HIS GUILT HAS NOT BEEN ESTABLISHED BEYOND REASONABLE DOUBT.

On 26 October 2006, the Court of Appeals affirmed in toto the RTC's decision.[22] The Motion for Reconsideration[23] filed by petitioner was denied[24] on 6 September 2007.

Petitioner is now before this Court seeking a review of the decision of the Court of Appeals, arguing that the appellate court gravely erred in convicting him on the ground that his guilt had not been proven beyond reasonable doubt.

Petitioner argues that the testimonies of PO1 Marchan and PO2 Germodo are incredible and untrustworthy. He denies that a buy-bust operation took place, and that the evidence against him is planted evidence.

We find the testimonies of PO1 Marchan and PO2 Germodo credible and straightforward. It is a fundamental rule that the trial court's findings that are factual in nature and that involve credibility are accorded respect when no glaring errors; gross misapprehension of facts; or speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court was 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.[25] The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[26] There being no compelling reasons to deviate from the findings of the trial court and the Court of Appeals, we stick by their findings.

The presumption of regularity in the performance of official duties likewise stands in this case. Said presumption was not overcome, as there was no evidence showing that the two police officers were impelled by improper motive. As admitted by petitioner, prior to 21 September 2000, he neither knew nor had any quarrel or misunderstanding with any or both of the afore-named policemen.

In asserting that there was no buy-bust operation and that he was framed, petitioner asserts that (1) a surveillance was not conducted; (2) it was highly unbelievable that PO1 Marchan would know that petitioner was a drug pusher and that the former, a total stranger, would sell shabu to the latter; (3) it was unlikely that the buy-bust operation was conducted at noon; (4) the confidential informant was not presented in court; and (5) the receipt of property seized was signed only by PO1 Marchan without any witnesses.

These assertions will not exonerate the petitioner.

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.[27] A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during

the entrapment.[28] Flexibility is a trait of good police work.[29] We have held that when time is of the essence, the police may dispense with the need for prior surveillance.[30] In the instant case, having been accompanied by the informant to the person who was peddling the dangerous drugs, the policemen need not have conducted any prior surveillance before they undertook the buy-bust operation.

Petitioner claims that there was no buy-bust operation because the same was hurriedly planned, and the briefing of the back-up (PO2 Germodo) was done for only two to three minutes.

We do not agree. As above explained, 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. If a police operation requires immediate implementation, time is of the essence, and sometimes only hasty preparations are possible.[31] The fact that the police officer who acted as back-up (or any other member of the team) was briefed only for a few minutes does not prove that there was no buy-bust operation that happened. A buy-bust operation can be carried out after a long period of planning or, as in the case on hand, abruptly or forthwith, without much preparation. The conduct thereof depends on the opportunity that may arise under the circumstances. Thus, the period of planning for such operation cannot be dictated to the police authorities who are to undertake such operation. In the case at bar, the buy-bust operation was planned in less than an hour prior to the buy-bust operation, after the informant contacted petitioner and told him that there was a buyer. Under the situation, the briefing of a team member for only a few minutes cannot be taken against the buy-bust team, for the team had to cope with what it had at that instant.

This Court finds that it was not improbable for petitioner to sell shabu to a total stranger like PO1 Marchan. We quote with approval the trial court's finding on the matter:

> The contention of the accused x x x that it would be highly improbable for PO1 Domingo Marchan a complete stranger to the accused to offer to buy shabu from the latter is not tenable. What matters in drug related cases is not the existing familiarity between the seller and the buyer, but their agreement and the acts constituting the sale and delivery of the dangerous drug (People v. Jaymalin, 214 SCRA 685). Besides, drug pushers, especially small quantity or retail pushers, sell their prohibited wares to anyone who can pay for the same, be they strangers or not (People v. Madriaga, 211 SCRA 711). It is of common knowledge that pushers, especially small-time dealers, peddle prohibited drugs in the open like any articles of commerce (People v. Merabueno, 239 SCRA 197). Drug pushers do no confine their nefarious trade to known customers and complete strangers are accommodated provided they have the money to pay (People v. Solon, 244 SCRA 554). It is therefore, not unusual for a stranger like PO1 Domingo Marchan to offer to buy shabu and for Gwyn Quinicot to entertain the offer after two days from their initial meeting especially in this case when the subsequent transaction was firmed up thru telephone facilitated by a civilian informant.[32]

It is also not surprising that the buy-bust operation was conducted at noontime. As we have ruled, drug-pushing when done on a small scale, as in this case, belongs to that class of crimes that may be committed at any time and at any place. After the offer to buy is accepted and the exchange is made, the illegal transaction is completed in a few minutes. The fact that the parties are in a public place and in the presence of other people may not always discourage them from pursuing their illegal trade, as these factors may even serve to camouflage the same.[33]

Petitioner's contention, that the non-presentation of the confidential informant was fatal, is untenable. The presentation of an informant is not a requisite for the prosecution of drug cases.[34] Police authorities rarely, if ever, remove the cloak of confidentiality with which they surround their poseur-buyers and informers, since their usefulness will be over the moment they are presented in court. Moreover, drug dealers do not look kindly upon squealers and informants. It is understandable why, as much as permitted, their identities are kept secret.[35]

The non-presentation of the confidential informant is not fatal to the prosecution. Informants are usually not

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presented in court because of the need to hide their identity and preserve their invaluable service to the police. It is well-settled that except when the petitioner vehemently denies selling prohibited drugs and there are material inconsistencies in the testimonies of the arresting officers, or there are reasons to believe that the arresting officers had motives to testify falsely against the petitioner, or that only the informant was the poseur-buyer who actually witnessed the entire transaction, the testimony of the informant may be dispensed with as it will merely be corroborative of the apprehending officers' eyewitness testimonies. There is no need to present the informant in court where the sale was actually witnessed and adequately proved by prosecution witnesses.[36] 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.[37] What can be fatal is the nonâ€‘presentation of the poseur-buyer, if there is no other eyewitness to the illicit transaction[38] -- not the nonâ€‘presentation of the informant whose testimony under certain circumstances would be merely corroborative or cumulative.[39]

In the case before us, it is not indispensable for the confidential informant to take the witness stand, considering that the poseur-buyer testified regarding the illegal sale made by petitioner. Furthermore, none of the above circumstances that necessitate the presentation of the informant obtains in this case. While petitioner denies selling shabu, there are no material inconsistencies in the testimonies of the arresting officers. Petitioner failed to show that the two police officers had motives to testify falsely against him. As admitted by petitioner, prior to 21 September 2000, he neither knew nor had any quarrel or misunderstanding with any or both of them. Lastly, the sale and the subsequent recovery of two more sachets of shabu from petitioner were adequately shown and proved by the prosecution witnesses, who were present and who dealt with the petitioner in the crime scene.

The Receipt of Property Seized[40] issued by PO1 Domingo Marchan was validly made. It enumerated the items - three plastic sachets containing white crystalline substance, and other paraphernalia - recovered from petitioner's body after he was arrested for selling shabu to the poseur-buyer. The lack of witnesses signing the same, petitioner claims, is evidence of a frame-up.

We do not agree. The two witnesses were not required to sign the receipt. This two-witness rule applies only to searches -- made under authority of a search warrant -- of a house, room, or any other premises in the absence of the lawful occupant thereof or any member of his family.[41] In the case at bar, there was no search warrant issued and no house, room or premises searched.

Petitioner's allegations of frame-up and extortion fall under the evidence adduced by the prosecution. Having been caught in flagrante delicto, his identity as seller and possessor of the shabu can no longer be disputed. Against the positive testimonies of the prosecution witnesses, petitioner's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[42] Allegations of frame-up and extortion by the police officers are common and standard defenses in most dangerous drugs cases. They are, however, viewed by this Court with disfavor, for such defenses can be easily concocted and fabricated. To prove such defenses, the evidence must be clear and convincing.[43]

The police officers are presumed to have performed their duties in accord with law. While such presumption is not conclusive, petitioner was, however, burdened to dispute the same by clear and convincing evidence. In this case, the evidence of the petitioner was utterly insufficient and unconvincing. He failed to provide by clear and convincing evidence that he was framed and that the police officers were extorting money from him. His allegations remain as such, unsubstantiated by credible and persuasive evidence.

Petitioner likewise submits, under the facts as presented by the prosecution, that he was instigated to sell shabu to PO1 Marchan. We find no instigation in this case. The established rule is that when an accused is charged with the

sale of illicit drugs, he cannot set up the following defenses, viz: (1) that facilities for the commission of the crime were intentionally placed in his way; or (2) that the criminal act was done at the solicitation of the decoy or poseur-buyer seeking to expose his criminal act; or (3) that police authorities feigning complicity in the act were present and apparently assisted in its commission. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct. [44]

In the case at bar, after the informant called petitioner informing the latter that there was a buyer of shabu, a plan of entrapment was made by the policemen. The buy-bust operation was organized specifically to test the veracity of the informant's tip and to arrest the malefactor if the report proved to be true. The prosecution evidence positively showed that the petitioner agreed to sell P300.00 worth of shabu to the poseur-buyer and was caught in flagrante delicto.

Petitioner was charged with violations of Sections 15 and 16 of Republic Act No. 6425. He was charged with violation of Section 15 for selling 0.119 gram of shabu. The elements necessary for the prosecution of illegal sale of drugs are: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[45] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction took place, coupled with the presentation in court of evidence of corpus delicti.[46]

The evidence for the prosecution showed the presence of all these elements. The poseur-buyer and his back-up described how the buy-bust happened, and the shabu sold was presented and identified in court. The poseur-buyer, PO1 Domingo Marchan, identified petitioner as the seller of the shabu. His testimony was corroborated by PO2 Allen June Germodo. The white crystalline substance weighing 0.119 gram, which was bought from petitioner for P300.00, was found to contain shabu per Chemistry Report No. D-146-2000.

In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in 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.[47] 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.[48]

Petitioner was likewise charged under Section 16 of Republic Act No. 6425 with possession of two sachets (2.1832 grams and 2.6355 grams) of shabu with a total weight of 4.8187 grams. In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.[49] All these elements have been established.

PO2 Allen June Germodo recounted how he recovered the two plastic sachets containing a white crystalline substance, and other drug paraphernalia from petitioner after conducting a body search on the latter after his arrest for selling a sachet containing a white crystalline substance to the poseur-buyer. The substance in the plastic sachets was shabu as confirmed by Chemistry Report No. D-146-2000. Because petitioner had been caught in flagrante delicto, the arresting officers were duty-bound to apprehend the culprit immediately and to search him for anything that may be used as proof of the commission of the crime. The search, being an incident of a lawful arrest, needed no warrant for its validity.[50]

Petitioner's claim that the two informations charging him should be voided, because he was not assisted by counsel during the inquest proceedings, does not hold water. From the records, it is clear that the prayer of petitioner for a regular preliminary investigation -- despite having been validly arrested without a warrant, and without executing a waiver of the provisions of Article 125 of the Revised Penal Code -- was still granted by the trial court. In the preliminary investigation conducted, petitioner was duly assisted by counsel. Unfortunately for

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petitioner, the prosecutor did not find any reason to alter or amend the informations filed.

Finally, we determine the proper imposable penalty. Both courts imposed on petitioner the indeterminate penalty of six months and one day of arresto mayor, as minimum, to four years and two months of prision correccional, as maximum, for selling 0.119 gram of shabu. The sale of less than 200 grams of methampethamine hydrochloride, a regulated drug, is punishable with a penalty ranging from prision correccional to reclusion temporal, depending on the quantity. The proper penalty to be imposed for the illegal sale of 0.119 gram of shabu would be prision correcional, pursuant to the second paragraph of Section 20 of Republic Act No. 6425, as amended by Section 17 of Republic Act No. 7659 and in consonance with the doctrine laid down in People v. Simon.[51] Further, applying the Indeterminate Sentence Law, the imposable penalty should be the indeterminate sentence of six months of arresto mayor, as minimum, to four years and two months of prision correccional, as maximum. The penalty imposed should thus be modified accordingly.

Both lower courts likewise found that petitioner possessed 4.8187 grams of methamphetamine hydrochloride and sentenced petitioner to an indeterminate penalty of six months and one day of arresto mayor, as minimum, to four years and two months of prision correccional, as maximum. As the Court ruled in People v. Tira[52]:

> Under Section 16, Article III of Rep. Act No. 6425, as amended, the imposable penalty of possession of a regulated drug, less than 200 grams, in this case, shabu, is prision correccional to reclusion perpetua. Based on the quantity of the regulated drug subject of the offense, the imposable penalty shall be as follows:
>
> QUANTITY
>
> IMPOSABLE PENALTY
>
> Less than one (1) gram to 49.25 grams
>
> prision correccional
>
> 49.26 grams to 98.50 grams
>
> prision mayor
>
> 98.51 grams to 147.75 grams
>
> reclusion temporal
>
> 147.76 grams to 199 grams
>
> reclusion perpetua

Considering that the shabu found in the possession of the petitioner was 4.8187 grams, the imposable penalty for the crime is prision correccional. Applying the Indeterminate Sentence Law, and modifying the penalty imposed by the lower courts, the petitioner is sentenced to suffer an indeterminate penalty of six months of arresto mayor, as minimum, to four years and two months of prision correccional, as maximum, for violation of Section 16 of Republic Act No. 6425, as amended.

In both cases, no fine is imposable since a fine can be imposed as a conjunctive penalty only if the penalty is reclusion perpetua to death.[53]

WHEREFORE, all the foregoing considered, the decision dated 26 October 2006 of the Court of Appeals affirming the convictions of petitioner Gwyn C. Quinicot for the sale of 0.119 gram of shabu and possession of 4.8187 grams of shabu, is hereby AFFIRMED with the MODIFICATION that the penalty of imprisonment imposed on petitioner for each case should be the indeterminate penalty of six (6) months of arresto mayor, as

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minimum, to four (4) years and two (2) months of prision correccional, as maximum.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

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[1] Penned by Associate Justice Agustin S. Dizon with Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla, concurring. Rollo, pp. 36-45.

[2] Id. at 46-57.

[3] Id. at 77.

[4] Criminal Case No. 14855 - possession.

[5] Criminal Case No. 14856 - sale.

[6] Records, p. 16.

[7] Id. at 3.

[8] Exhs. F, G and H; records, p. 12.

[9] Exhs. F-1, G-1 and H-1; id. at 13.

[10] Exh. E - Crim. Case No. 14856.

[11] Exhs. E and F - Crim. Case No. 14855.

[12] Exh. I - Crim. Case No. 14855.

[13] Exh. A - Both cases.

[14] Exh. O - Both cases.

[15] Exh. E - Crim. Case No. 14856.

[16] Exh. E - Crim. Case No. 14855.

[17] Exh. F - Crim. Case No. 14855.

[18] Exh. D - Both cases.

[19] Exh. I.

[20] Sometimes spelled as "Patula."

[21] Records, pp. 152-153.

[22] Id. at 45.

[23] Id. at 59-66.

[24] Id. at 77-78.

[25] People v. Julian-Fernandez, 423 Phil. 895, 910 (2001).

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

[27] People v. Li Yin Chu, 467 Phil. 582, 597 (2004).

[28] People v. Gonzales, 430 Phil. 504, 514 (2002).

[29] People v. Cadley, 469 Phil. 515, 525 (2004).

[30] People v. Eugenio, 443 Phil. 411, 423 (2003).

[31] People v. Li Yin Chu, supra note 27.

[32] Records, p. 151.

[33] People v. Paco, G.R. No. 76893, 27 February 1989, 170 SCRA 681, 689.

[34] People v. De los Reyes, G.R. No. 106874, 21 January 1994, 229 SCRA 439, 447.

[35] People v. Cheng Ho Chua, 364 Phil. 497, 513 (1999).

[36] People v. Doria, 361 Phil. 595, 622 (1999).

[37] People v. Santiago, G.R. No. 175326, 28 November 2007, 539 SCRA 198, 223.

[38] People v. Polizon, G.R. No. 84917, 18 September 1992, 214 SCRA 56, 61.

[39] People v. Li Wai Cheung, G.R. Nos. 90440-42, 13 October 1992, 214 SCRA 504, 513; People v. Mendoza, G.R. No. 92387, 18 December 1992, 216 SCRA 715, 718-719.

[40] Exh. A - both cases; rollo, p. 81.

[41] Rules of Court, Rule 126, Sec. 8.

Sec. 8. Search of house, room, or premises to be made in presence of two witnesses. - No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

[42] People v. Sy, G.R. No. 171397, 27 September 2006, 503 SCRA772, 783.

[43] People v. Yong Fung Yuen, 467 Phil. 656, 674 (2004).

[44] People v. Gonzales, supra note 28.

[45] People v. Adam, 459 Phil. 676, 684 (2003).

[46] People v. Nicolas, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 198.

[47] People v. Cabugatan, supra note 26.

[48] People v. Del Mundo, G.R. No. 169141, 6 December 2006, 510 SCRA 554, 565-566.

[49] People v. Khor, 366 Phil. 762, 795 (1999).

[50] People v. Salazar, 334 Phil. 556, 570 (1997).

[51] G.R. No. 93028, 29 July 1994, 234 SCRA 555.

[52] G.R. No. 139615, 28 May 2004, 430 SCRA 134, 155.

[53] People v. Simon, supra note 51 at 573; People v. Elamparo, 385 Phil. 1052, 1065-1066 (2000); People v. Concepcion, 414 Phil. 247, 266 (2001); People v. Medina, 354 Phil. 447, 463 (1998).

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