

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARILYN NAQUITA Y CIBULO, ACCUSED-APPELLANT.

G.R. No. 180511. July 28, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 01344 dated 29 December 2006 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 120, in Criminal Cases Nos. C-69156 and C-69157, finding accused-appellant Marilyn C. Naquita guilty of violation of Sections 5[3] and 11,[4] Article II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

On 19 September 2003, appellant was charged in two informations with Violation of Sections 5 and 11, Article II of Republic Act No. 9165. The accusatory portion of the informations reads:

Crim. Case No. C-69156

That on or about the 17[th] day of September, 2003 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there wilfully, unlawfully and feloniously sell and deliver to PO1 JOEL C. COSME, who posed as poseur buyer, one (1) heat sealed transparent plastic sachet containing 2.05 grams, knowing the same to be a dangerous drug.[5]Crim. Case No. C-69157

That on or about the 17[th] day of September, 2003 in Caloocan City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority of law, did then and there wilfully, unlawfully and feloniously have in her possession, custody and control two (2) pcs. of transparent plastic sachets containing Methylamphetamine Hydrochloride with a total weight of 3.90 grams, knowing the same to be a dangerous drug.[6]

When arraigned on 2 October 2003, appellant, with the assistance of counsel de oficio, pleaded "Not guilty" to the crimes charged.

In the pre-trial conference conducted on 18 November 2003, counsel for appellant admitted the jurisdiction of the trial court and the identity of the appellant as the person named and charged in the informations filed. With the termination of the pre-trial conference, joint trial of the cases ensued.

The following witnesses took the stand for the prosecution: (1) Police Officer 1 (PO1) Joel Cosme[7] and (2) PO1 Randy Llanderal,[8] both police officers assigned at the District Anti-Illegal Drugs Special Operations Group (DAID-SOG), Northern Police District Command, Tanigue St., Kaunlaran Village, Caloocan City.

From the collective testimonies of the witnesses, the version of the prosecution is as follows:

On 17 September 2003, at around 3:00 o'clock in the afternoon, a confidential informant went to the office of the DAID-SOG, Northern Police District Command in Caloocan City and reported to PO3 Joel Borda that one alias

Inday (appellant) was selling shabu at Binangonan, Maypajo, Caloocan City. The information was relayed to Police Chief Inspector (P/Chief Insp.) Rafael Santiago, Jr. who then instructed PO3 Borda to organize a team and to conduct surveillance for a possible buy-bust operation. A buy-bust team was formed which was composed of PO3 Borda as team leader; PO1 Joel Cosme as the poseur-buyer; and PO2 Mananghaya, PO2 Amoyo, PO2 Lagmay, PO2 Velasco, PO2 Dela Cruz, PO1 Reyes and PO1 Randy Llanderal as members. The buy-bust money, which consisted of six P500.00 bills,[9] was given by P/Chief Insp. Santiago to PO1 Cosme who placed his initials[10] thereon. The serial numbers of the buy-bust money were then recorded by the desk officer on duty. During the briefing, it was agreed upon that the pre-arranged signal to be made by the poseur-buyer, signifying that the shabu had been bought from alias Inday, was the scratching of the left ear.

At around 4:00 p.m., the team, together with the confidential informant, proceeded to Maypajo, Caloocan City. Arriving thereat at around 4:30 p.m., the team conducted a surveillance of Binangonan Street. At around 8:00 p.m., team leader PO3 Borda decided to start the buy-bust operation against appellant. The confidential informant and PO1 Cosme approached the appellant who was standing along Binangonan Street. PO1 Llanderal was about five meters away, while the rest of the team members stayed at the van. The confidential informant introduced PO1 Cosme to appellant as someone who was looking for a person who was selling shabu. Appellant asked PO1 Cosme how much he intended to buy. The latter answered, "KALAHATING BULTO. HALAGANG TATLONG LIBO." PO1 Cosme gave the money to appellant who, in turn, took out plastic sachets from her pocket and gave one to PO1 Cosme. Appellant returned the other plastic sachets to her pocket. After receiving the plastic sachet, PO1 Cosme examined the same and, as a pre-arranged signal, scratched his left ear. Noticing that PO1 Llanderal was already near, PO1 Cosme held appellant and introduced himself as a police officer. He retrieved the buy-bust money which appellant was still holding. PO1 Llanderal arrived from behind appellant and ordered her to empty her pockets. PO1 Llanderal recovered two plastic sachets.

With the arrest of appellant, the team immediately returned to their office. The marked money used and the three plastic sachets allegedly containing shabu were turned over to PO1 Ariosto Rana, the investigator of the case. The plastic sachet[11] sold to PO1 Cosme was marked "JCC," while the two plastic sachets[12] recovered by PO1 Llanderal were marked "RML-1" and "RML-2," respectively. It was in their office that the police officers came to know the complete name of appellant.

The white crystalline substance in the three plastic sachets recovered from appellant were forwarded to the Philippine National Police Crime Laboratory, Northern Police District Crime Laboratory Office, Caloocan City, for laboratory examination to determine the presence of any dangerous drug. The request for laboratory examination was signed by P/Chief Insp. Rafael Santiago, Jr.[13] Per Physical Sciences Report No. D-1217-03, the specimens[14] submitted contain methylamphetamine hydrochloride, a dangerous drug.

The testimony of Police Inspector Jesse Abadilla dela Rosa, Forensic Chemical Officer who examined the specimens recovered from appellant, was dispensed with, after counsel for the appellant admitted that the witness was an expert witness and that, upon request by police officers, he conducted qualitative examination on the specimens. His findings are contained in Physical Sciences Report No. D-1217-03.[15] Counsel for the appellant also admitted that PO2 Ariosto Rana was the investigator in the case, that it was he who prepared the Referral Letter addressed to the City Prosecutor, the Affidavit of Arrest and the Request for Laboratory Examination; and that he could identify the appellant and the specimens marked. With said admission, the testimony of PO2 Rana was likewise dispensed with.[16]

For the defense, Reynaldo Reyes,[17] Antonio San Pedro,[18] Maricris Manoles[19] and the appellant[20] took the witness stand.

Reynaldo Reyes, barangay kagawad and resident of 199 Pateros St., Maypajo, Caloocan City, testified that at around 6:00 p.m. of 17 September 2003, while he was on duty at the barangay hall located at Binangonan St., Maypajo, Caloocan City, Antonio San Pedro arrived and asked for assistance. At that time, he was with barangay tanods Abdul Mina and Dolly Evangelista. They responded and proceeded to the house of Aling Inday (appellant) at Bagong Sibol. Arriving thereat at around 7:00 p.m., he saw more or less ten policemen. The policemen who were inside appellant's house searched the ground floor and the second floor. He asked two policemen who were outside what the problem was. He was told that appellant was a dealer of shabu.

Reyes narrated that appellant was with her daughter and a little girl inside the house. He added that when he asked the policemen if they had a search warrant to search the house, he was told that the barangay hall knew of the operation. When appellant was arrested, he said the policemen showed them the shabu contained in a plastic sachet which weighed more or less half a kilo. Thereafter, the policemen brought the appellant with them.

Reyes disclosed that he executed a Pinagsamang Sinumpaang Salaysay[21] on 21 September 2003 which he subscribed before the Assistant City Prosecutor of Caloocan City on 26 September 2003.

Antonio San Pedro, tricycle driver and resident of 103 Binangonan St., Maypajo, Caloocan City recounted that at about 5:30 p.m. of 17 September 2003, he was in Benitez Elementary School at Gagalangin, Tondo, Manila waiting for Angela Naquita, the niece of appellant, whom he was going to fetch. He fetched Angela and they proceeded to her house in Bagong Sibol, Caloocan City. They arrived at the house at around 6:30 p.m., and appellant, who was then washing clothes, opened the gate. After Angela entered the gate and after appellant gave her P100.00, a group of policemen, numbering more or less ten, suddenly entered the gate. Appellant closed the gate and the policemen entered the house. Some of the policemen went upstairs while the others held the appellant, forcing her to sit down. Appellant shouted, "BAKIT NINYO AKO HUHULIHIN? BAKIT KAYO NAGSIPASOK SA BAHAY? SINO BA KAYO?" San Pedro looked inside the house and saw appellant resisting. When appellant saw him, appellant asked him to seek assistance from the barangay. He went to the barangay hall at Binangonan Street where he saw Kagawad Reyes, Abdul Mina and Danny Evangelista. He asked for help and told them to go to the house of appellant. They proceeded to the house and arrived around 7:00 p.m. They introduced themselves as barangay officials and were allowed to enter the house. Aside from appellant, Angela Naquita and Maricris Naquita were also in the house when the policemen entered.

Mr. San Pedro testified that he executed a Sinumpaang Salaysay[22] dated 19 September 2003 which he subscribed before the Assistant City Prosecutor on 26 September 2003.

Next to testify for the defense was Maricris Manoles,[23] student and daughter of the appellant. She testified that on 17 September 2003, she was in school at the Centro Escolar University by 7:00 a.m. By 3:00 p.m., she was already in her house at 67 Binangonan St., Maypajo, Caloocan City. It was her mother, the appellant, who was sleeping when she arrived, who opened the gate for her. Thereafter, her mother did the laundry. After changing clothes, Maricris bought merienda and ate the same in her house with her boyfriend. By 5:00 p.m. her boyfriend left and she then watched television. While watching television, her ten-year-old niece, Angela Naquita, arrived riding a tricycle. When appellant opened the gate, more or less nine policemen also entered their residence. Appellant was surprised and became hysterical. Both Maricris and her mother were crying. The policemen proceeded upstairs to appellant's room and searched the same. Appellant sat in the sofa and was prevented from going upstairs. Maricris was able to go upstairs after she was instructed by appellant to check the latter's money that was kept there. After around thirty minutes, three barangay officials arrived and were able to enter the house. However, after a while, the policemen told the three to leave. At past 7:00 p.m., appellant was taken by the policemen to Larangay Police Station in Caloocan City. The policemen, as well as appellant, did not allow Maricris to go with them. Maricris informed her friends and relatives about the incident. She took pictures[24] of

appellant's room and their gate. She added that when she proceeded to the police station, a police officer demanded P200,000.00 for the release of appellant.

Maricris executed a sworn statement[25] dated 6 October 2003 which she subscribed before the Assistant City Prosecutor of Caloocan City on 24 October 2003. She alleged therein that the police officers took several pieces of jewelry, a Nokia cell phone and P72,000.00. The sworn statement, she said, will be used for cases filed by appellant.

Appellant testified for her defense. She testified that she was separated, a businesswoman engaged in buy and sell, and a resident of 67 Bagong Sibol St., Maypajo, Caloocan City.

Appellant narrated that at around 6:30 p.m. of 17 September 2003, she was in her house washing clothes. Her daughter, Maricris, was inside watching television. While doing the laundry, her niece, Angela, arrived and called her and told her that the tricycle driver, Antonio San Pedro, wanted to get a P100.00 vale. After her niece entered the gate, she was surprised that nine to ten persons entered the gate. It was the first time she saw these persons who were in civilian clothes and were armed with a long firearm. Appellant tried to prevent them from entering the house but to no avail. Seeing that five to six men went upstairs, she told Mr. San Pedro to call barangay officials. She had no idea what the armed men did but she asked her daughter to go upstairs because her money was in the second floor. Her daughter informed her that her cell phone worth P15,000.00, several pieces of jewelry worth P15,000.00, and cash amounting to P72,000.00 were missing from her room.

Barangay officials arrived and she asked them to go inside but they were prevented by these men. It was at this moment that the armed men introduced themselves as policemen to the barangay officials. After searching her residence and taking several of her belongings, the policemen brought her to Larangay Police Station. At the police station, appellant was informed that she was being charged with violation of Section 5 of Republic Act No. 9165. A certain Gilbert Velasco told her that if she did not give money, she could not go home. Another police officer named Toto, she claimed, also talked to her and relayed the same message. She alleged that the policemen told her that someone pointed to her as one involved in drugs. Appellant denied that she was peddling shabu at 8:00 p.m. of 17 September 2003 when she was arrested by policemen.

Appellant revealed that she executed a Sinumpaang Salaysay[26] dated 6 October 2003, and filed cases of robbery, illegal arrest and violation of Section 29 of Republic Act No. 9165 against the policemen named therein. She added that prior to the incident, she did not know PO1 Joel Cosme, PO1 Llanderal, and the members of the DAID-SOG.

The testimony of Abdul Mina, member of the Lupong Tagapamayapa, was dispensed with after the public prosecutor admitted that said witness would corroborate the testimony Reynaldo Reyes.[27]

On 28 June 2005, the trial court rendered its decision convicting appellant of violation of Sections 5 and 11 of Republic Act No. 9165. The decretal portion of the decision reads:

WHEREFORE, premises considered, the Court finds and so holds that accused MARILYN NAQUITA y CIBULO is GUILTY beyond reasonable doubt [of] Violation of Republic Act No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and imposes upon her the following:

- In Criminal Case No. C-69156 for Violation of Section 5, Article II, the penalty of LIFE IMPRISONMENT and a fine of P500,000.00; and
- In Criminal Case No. C-69157 for Violation of Section 11, Article II, the penalty of imprisonment of Twelve (12) years and One (1) day to Twenty (20) years and a fine of P300,000.00.

The three (3) pieces of heat-sealed transparent plastic sachets each containing 2.05 gram(s) ("JCC"), 1.84

gram(s) ("RML-1") and 2.05 gram(s) ("RML-2") of Methylamphetamine Hydrochloride are hereby ordered confiscated in favor of the government to be turned over [to] the Philippine Drug Enforcement Agency for proper disposition.[28]

The trial court convicted appellant for selling and possessing dangerous drugs on the strength of the testimonies of PO1 Cosme and PO1 Llanderal as well as the Physical Sciences Report adduced in evidence by the prosecution. It did not give weight to appellant's claims of frame-up and extortion. It further appreciated in favor of the police officers the presumption of regularity in the performance of official duty when accused admitted that she did not know any of the operatives who took part in the buy-bust operation and that the policemen had no motive for falsely imputing to her a serious crime.

On 11 July 2005, appellant filed a Notice of Appeal.[29] With the filing thereof, the trial court ordered the elevation of the entire records of the case to the Court of Appeals.[30]

On 29 December 2006, the Court of Appeals dismissed appellant's appeal and affirmed her conviction for the crimes charged. It, however, modified the penalty imposed in Criminal Case No. C-69157. The dispositive portion of the decision reads:

WHEREFORE, in the light of the foregoing, the appeal is DISMISSED for lack of merit. The assailed decision is AFFIRMED with the MODIFICATION that the accused-appellant in Criminal Case No. C-69157 is sentenced to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum, and to pay a fine of Three Hundred Thousand Pesos (P300,000.00).

Costs against the accused-appellant.[31]

Appellant filed a Motion for Reconsideration[32] of the Court of Appeals decision which the appellate court denied in its Resolution dated 18 April 2007.[33] Appellant filed a Notice of Appeal notifying the Court of Appeals of her intention to appeal her conviction before the Supreme Court.[34]

In our Resolution[35] dated 28 January 2008, this Court accepted appellant's appeal and notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. Both parties opted not to file a supplemental brief on the ground they had exhaustively argued all the relevant issues in their respective briefs, and the filing of a supplemental brief would only contain a repetition of the arguments already discussed therein.[36]

Appellant tasks this Court with the following assignment of errors:

- The Court a quo gravely erred in completely disregarding the defense' factual version and upholding the presumption of regularity of performance of official duties despite the accused-appellant's version supported by disinterested witnesses and Barangay officials.
- The Court a quo gravely erred in finding accused-appellant guilty beyond reasonable doubt of violation of Section 5 and 11, Article II of Republic Act 9165 based on the weakness of the defense evidence and not on the strength of prosecution's evidence.[37]

Appellant assails her conviction primarily on the ground that the trial court gave more credence to the testimonies of the police officers who took part in the buy-bust operation than the testimonies of the defense witnesses. She claims that the defense witnesses are more credible than the self-serving allegations of the police officers. She faults the police officers for not naming the informant who revealed to them that she was a drug peddler. Appellant adds that the trial court should not have relied mainly on the weakness of the defense; rather, it should have relied on the strength of the prosecution's evidence. She maintains that the buy-bust operation suffers from

severe factual and legal infirmity because of lack of a Pre-Operation and Coordination Report prior to the actual drug operation; and that the police officers violated Section 21 of Republic Act No. 9165, because the buy-bust team failed to conduct a physical inventory of the drugs seized and to photograph the same in the presence of the people mentioned in said section.

Appellant insists there was no buy-bust operation conducted at 8:00 p.m. of 17 September 2003 in Binangonan St., Maypajo, Caloocan City where she was allegedly caught in flagrante selling and possessing dangerous drugs. According to her, the policemen, without any valid search warrant, conducted a raid and took valuable items from her house located at 67 Bagong Sibol St., Maypajo, Caloocan City at around 6:30 to 7:00 p.m. of 17 September 2003, and subsequently arrested her for supposedly being involved in drugs.

The issue of whether or not there was indeed a buy-bust operation primarily boils down to one of credibility. In a prosecution for violation of the Dangerous Drugs Law, a case becomes a contest of the credibility of witnesses and their testimonies.[38] When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate testimonial evidence properly.[39] The rule finds an even more stringent application where the said findings are sustained by the Court of Appeals.[40]

After examining the records on hand, we find no reason to overrule the findings of the trial court as affirmed by the Court of Appeals.

Appellant insists that the testimonies of her "independent" witnesses — Reynaldo Reyes, Antonio San Pedro and Maricris Manoles — should be given more weight than the testimonies of the prosecution witnesses.

We do not agree. Maricris Manoles is appellant's daughter, while Antonio San Pedro is her friend serving as the tricycle service of her niece, Angela Naquita. Their testimonies are necessarily suspect, considering they are appellant's close relative and friend.[41] As to Barangay Kagawad Reynaldo Reyes and Antonio San Pedro, we find them unreliable. Their declarations were not in accord with each other on the question of whether or not the barangay officials were allowed inside the house of appellant when the policemen supposedly violated its sanctity. Reyes said he and two other barangay officials were not allowed inside appellant's house.[42] Said statement was confirmed by appellant[43] but was contradicted by San Pedro.[44]

Appellant argues that the policemen's allegations are sham and false, purposely made to cover up their criminal acts. She adds that they could not even name the informant who allegedly revealed to them that she was a drug peddler.

The presentation of an informant is not a requisite in the prosecution of drug cases.[45] The failure of the prosecution to present the informant does not vitiate its cause as the latter's testimony is not indispensable to a successful prosecution for drug-pushing, since his testimony would be merely corroborative of and cumulative with that of the poseur-buyer who was presented in court and who testified on the facts and circumstances of the sale and delivery of the prohibited drug.[46] Failure of the prosecution to produce the informant in court is of no moment, especially when he is not even the best witness to establish the fact that a buy-bust operation has indeed been conducted.[47] Informants are usually not presented in court because of the need to hide their identities and preserve their invaluable services to the police. It is well-settled that except when the accused 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 falsely testify against the accused, 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 accounts.[48]

In the case under consideration, none of the exceptions are present that would make the testimony of the confidential informant indispensable. As admitted by appellant, the police officers who testified against her were not known to her before her arrest. We likewise do not find material inconsistencies in their testimonies. Further, the informant is a person different from the poseur-buyer. What we find vital is appellant's apprehension while peddling and possessing dangerous drugs by PO1 Cosme and PO1 Llanderal.

To further cast doubt on the existence of the buy-bust operation, appellant contends that the alleged buy-bust operation suffered from severe infirmity, both factual and legal. She argues that not only was there no Pre-Operation and Coordination Report prior to the actual drug operation as required in Section 86[49] of Republic Act No. 9165, Section 21 thereof was also violated by the buy-bust team when it failed to make a physical inventory of the drugs seized and confiscated and to take photographs thereof in the presence of persons mentioned in said section.

Non-compliance with the aforesaid sections does not mean that no buy-bust operation against appellant ever took place. The failure of the police operatives to comply with Section 86 will neither render her arrest illegal nor the evidence seized from her inadmissible. In *People v. Sta. Maria*,[50] we have ruled on the same issue as follows:

Appellant would next argue that the evidence against him was obtained in violation of Sections 21 and 86 of Republic Act No. 9165 because the buy-bust operation was made without any involvement of the Philippine Drug Enforcement Agency (PDEA). Prescinding therefrom, he concludes that the prosecution's evidence, both testimonial and documentary, was inadmissible having been procured in violation of his constitutional right against illegal arrest.

The argument is specious.

x x x x

Cursory read, the foregoing provision is silent as to the consequences of failure on the part of the law enforcers to transfer drug-related cases to the PDEA, in the same way that the Implementing Rules and Regulations (IRR) of Republic Act No. 9165 is also silent on the matter. But by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal nor evidence obtained pursuant to such an arrest inadmissible.

It is a well-established rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction is to be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.

As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Additionally, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board, "shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." We find much logic in the Solicitor General's interpretation that it is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, i.e., the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. x x x.

Neither would non-compliance with Section 21[51] render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[52] 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.[53]

In the instant case, the integrity of the drugs seized from appellant was preserved. The chain of custody of the drugs subject matter of the case was shown not to have been broken. After PO1 Cosme and PO1 Llanderal seized and confiscated the dangerous drugs from appellant, same were marked and turned over to PO1 Ariosto Rana, the investigator of the case. The plastic sachet sold to PO1 Cosme was marked "JCC," while the two plastic sachets recovered by PO1 Llanderal were marked "RML-1" and "RML-2," respectively. As requested by P/Chief Insp. Rafael P. Santiago, Jr., the three plastic sachets containing white crystalline substance were forwarded to the Philippine National Police Crime Laboratory, Northern Police District Crime Laboratory Office, Caloocan City, for laboratory examination to determine the presence of any dangerous drug. Per Physical Sciences Report No. D-1217-03, the specimens submitted contain methylamphetamine hydrochloride, a dangerous drug.

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.[54] 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.[55]

All these elements were established in the instant case. The prosecution clearly showed that the sale of the drugs actually happened and that the shabu subject of the sale was brought to and identified in court. The poseur-buyer (PO1 Cosme) positively identified appellant as the seller of the shabu. Per Physical Sciences Report No. D-1217-03 of Police Inspector Jesse Abadilla dela Rosa, Forensic Chemical Officer, the substance, weighing 2.05 grams, which was bought by PO1 Cosme from appellant for P3,000.00, was examined and found to be methylamphetamine hydrochloride (shabu). Poseur-buyer PO1 Cosme narrated the transaction with appellant as follows:

Q

And how was the operation started?

A

I was with the confidential informant and PO1 Randy Llanderal was just a distance away from us, sir.

Q

And how about the other members of the team?

A

They were in the van, sir.

Q

Where did you do together with the informant?

A

We proceeded to where Alias Inday was, sir.

Q

Where is this place where she usually stands?

A

Binangonan Street, sir, the same place.

Q

Were you able to arrive in said place?

A

Yes, sir.

Q

Where was Alias Inday then at that time?

A

She was standing along the street, sir.

x x x x

Q

What then did you do after seeing this Alias Inday standing in the street?

A

Together with the confidential informant, we approached Alias Inday and I was introduced to her, sir.

Q

How were you introduced by your informant to Alias Inday?

A

The confidential informant told her (Inday) that I am looking for a person who is selling shabu, sir.

Q

What was the response of Inday?

A

She asked me how much I intend to buy, sir.

Q

What was your answer?

A

I told her, "KALAHATING BULTO. HALAGANG TATLONG LIBO."

Q

What then transpired after you told her your intention to buy?

A

I first gave the money to Alias Inday, sir.

Q

And after that?

A

Then she took plastic sachets containing suspected shabu from her pocket and she gave me one (1) plastic sachet, sir.

Q

What did she do with the other plastic sachets?

A

She returned them to her pocket, sir.

Q

After that what then did you do?

A

After I took hold of the plastic sachet containing shabu, I examined it then after that I scratched my ear, sir.

Q

And then?

A

When I noticed that PO1 Randy Llanderal was already near us, I held Alias Inday, sir.

Q

After you introduced yourself as police officer, what else did you do?

A

I took from her the buy-bust money worth three thousand (P3,000.00) pesos, sir.

Q

And were you able to get it?

Court -

Q

From where in relation to the person of Inday?

A

She was still holding the money, your Honor.[56]

Appellant was likewise indicted for possession of two sachets of shabu respectively weighing 1.84 grams and 2.06 grams for a total weight of 3.90 grams. In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not

authorized by law; and (3) the accused freely and consciously possessed the said drug.[57] All these elements have been established. PO1 Llanderal testified:

Q-

You started the buy bust operation at about 8:00 o'clock in the evening of December 17, 2003?

Q-

What did your team do?

A-

Me and PO1 Cosme alighted from the van together with the informant.

Q-

Where did you proceed?

A-

Po1 Cosme proceeded to the place where Inday was standing together with the informant.

Q-

How far were you from them referring to Cosme and the informant?

A-

I hid near the parked jeep around five (5) meters away from them.

Q-

And then what did you do with the distance of five (5) meters?

A-

We were observing them and their actions.

Q-

Where were you positioned then in that distance of five (5) meters away?

A-

I was inside the passenger jeepney.

Q-

Was there anything blocking your sight to the place of Cosme and the informant and also the place of Inday?

A-

There was nothing blocking my sight.

Q-

What did you observe if any?

A-

I saw PO1 Cosme introduced by the asset to Inday and I saw them talking sir.

Q-

And then what else did you observe?

A-

They were talking and I overheard Inday asking how much, sir.

Q-

And what was the reply of PO1 Cosme if you hear it?

A-

That I will buy "kalahati".

Court:

How far were you when you overheard the transaction between Cosme and the accused?

A-

I was five (5) meters away, sir.

Court:

You were only five meters away?

A-

Yes, sir.

Court:

Why, were you hiding at that time?

A-

I was hiding but I can see their transaction, sir.

Court:

You mean to say from the place where you were located at that time you can overheard their transaction?

A-

Yes, your Honor the buying and handing.

Q-

What do you mean you saw the handing of Cosme the extending of money?

A-

Yes, your Honor.

Q-

Did you see also the accused counting the money she allegedly received?

A-

After PO1 Cosme handed the money, alias Inday took the plastic sachet, placed the money in her pocket and she took something from the other side of her pocket.

Court:

Of course you did not if there were two, three she just extended to him something?

A-

After she took three (3) plastic sachets, one was given to PO1 Joel Cosme and the two (2) remaining sachets, she returned it to her pocket.

Q-

After she put back the two (2) plastic sachets to her pocket, what then transpired?

A-

Then PO1 Joel Cosme scratched his ear as pre-arranged signal.

Q-

After seeing the pre-arranged signal, what did you do?

A-

I slowly approached them sir.

Q-

What did you do then after approaching them?

A-

While I was approaching them, PO1 Cosme identified himself to Alias Inday and Alias Inday was arrested.

Q-

How about you, what did you do?

A-

And upon seeing PO1 Joel Cosme arresting Alias Inday, I requested Aling Inday to pull out her pocket.

Q-

And what is the reaction of Alias Inday when you asked her to unload everything in her pocket?

A-

She uttered something that she does not know anything.

Q-

And then?

A-

I ordered her to "ilabas mong lahat ang nasa iyong bulsa."

Q-

And then?

A-

After she pulled out her hand, I saw two (2) plastic sachets as far as I know it contained shabu.

Q-

And then what did you do upon seeing plastic sachets taken by her from her pocket which you suspect to be shabu?

A-

We informed her that she is being arrested.[58]

Finally, appellant's allegation that the police officers were exacting P200,000.00 from her has no basis. Except for her bare allegations, unsupported by concrete proof, we cannot give such imputation a second look.

IN ALL, the evidence for the prosecution established that appellant was apprehended in flagrante during a buy-bust operation in which she sold a sachet of shabu to PO1 Cosme, who acted as poseur-buyer, and was thereafter caught by PO1 Llanderal in possession of two more sachets of shabu.

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.[59] 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.[60]

In the instant case, appellant miserably failed to show that the members of the buy-bust team were impelled by any improper motive or that they did not properly perform their duty. This being the case, we uphold the presumption of regularity in the performance of official duties. The law disputably presumes that official duty has been regularly performed.[61] The presumption was not overcome, there being no evidence showing that PO1 Cosme, PO1 Llanderal and the rest of the team were impelled by improper motive. In fact, appellant admitted that prior to the incident, she did not know PO1 Cosme, PO1 Llanderal and the rest of the buy-bust team.

Having been caught in flagrante, appellant's identity as seller and possessor of the shabu can no longer be disputed. Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[62] 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.[63] 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.[64]

We now go to the penalties imposed on appellant for selling and possessing shabu. For selling shabu weighing 2.05 grams, the trial court imposed on appellant the penalty of life imprisonment and a fine of P500,000.00. Said penalty was affirmed by the Court of Appeals. As regards appellant's possession of 3.90 grams of shabu, the trial court imposed on him the penalty of twelve (12) years and one (1) day to twenty (20) years and a fine of P300,000.00. The Court of Appeals, applying the Indeterminate Sentence Law,[65] modified the penalty of imprisonment to twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum.

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.[66] The statute, in prescribing the range of penalties imposable, does not concern itself with the amount of dangerous drug sold by an accused.[67] 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. Thus, the penalty to be imposed on appellant shall only be life imprisonment and fine. Finding that the penalty imposed on appellant for selling shabu is in accordance with law, this Court upholds the same.

As regards possession of dangerous drugs, the same is punished under Section 11, Article II of Republic Act No. 9165. Paragraph 2, No. 3 thereof, reads:

(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 x x x methamphetamine hydrochloride x x x.

Having been caught in possession of 3.90 grams of shabu or methamphetamine hydrochloride, the afore-quoted paragraph provides for the appropriate penalty. Going over the penalty imposed by the Court of Appeals, we find it to be within the range provided for by law. We therefore sustain it.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01344 dated 29 December 2006 sustaining the conviction of appellant Marilyn C. Naquita for violation of Sections 5 and 11, 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 Amelita G. Tolentino with Associate Justices Portia Aliño-Hormachuelos and Arcangelita Romilla-Lontok, concurring; CA rollo, pp. 129-146.

[2] Records, pp. 138-151.

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

[4] Possession of Dangerous Drugs.

[5] Records, p. 1.

[6] Id. at 10.

[7] TSN, 14, 15 and 21 January 2004.

[8] TSN, 4 February 2004.

[9] Exhs. E to J.

[10] Exhs. E-1 to J-1.

[11] Exh. D-4.

[12] Exhs. D-5 and D-6.

[13] Exh. C, Records, p. 70.

[14] A ("JCC") - 2.05 grams

B ("RML-1") - 1.84 grams

C ("RML-2") - 2.06 grams

[15] Records, p. 44.

[16]TSN, 26 February 2004, p. 3.

[17] TSN, 10 March 2004.

[18] TSN, 14 April 2004.

[19] TSN, 20 April 2004.

[20]TSN, 27 April 2004.

[21] Exh. 4, Records, pp. 125-126.

[22] Exh. 5; Records, pp 127-128.

[23]Also known as Maricris Naquita.

[24]Exhs. 7 to 7-E.

[25]Exh. 6; Records, pp. 129-130.

[26]Exh. 8; Records, pp. 131-132.

[27] TSN, 10 March 2004, p. 23.

[28] Records, p. 151.

[29] Id. at 157.

[30] Id. at 159.

[31] CA rollo, pp. 145-146.

[32]

Id. at 147-163.

[33] Id. at 194-195.

[34] Id. at 198.

[35] Rollo, p. 23.

[36] Id. at 25-27.

[37] CA rollo, p. 55.

[38] People v. Evangelista, G.R. No. 175281, 27 September 2007, 534 SCRA 241, 250.

[39] People v. Escultor, G.R. Nos. 149366-67, 27 May 2004, 429 SCRA 651, 661.

[40] People v. Arivan, G.R. No. 176065, 22 April 2008.

[41] People v. Opeliña, 458 Phil. 1001, 1014 (2003).

[42] Records, p. 125.

[43] TSN, 27 April 2004, p. 7.

[44] TSN, 14 April 2004, p. 8.

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

[46] *People v. Evangelista*, supra note 38.

[47] *Espano v. Court of Appeals*, 351 Phil. 798, 806 (1998).

[48] *Dimacuha v. People*, G.R. No. 143705, 23 February 2007, 516 SRA 513, 522-523.

[49] Erroneously cited by appellant as Section 80.

[50] G.R. No. 171019, 23 February 2007, 516 SCRA 621, 630-632.

[51] 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.

[52] *People v. Del Monte*, G.R. No. 179940, 23 April 2008.

[53] *People v. Concepcion*, G.R. No. 178876, 27 June 2008.

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

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

[56] TSN, 14 January 2004, pp. 9-12.

[57] *People v. Khor*, 366 Phil. 762, 777 (1999).

[58] TSN, 4 February 2004, pp. 11-18.

[59] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 552.

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

[61] *People v. Garcia*, G.R. No. 105805, 16 August 1994, 235 SCRA 371, 377.

[62] *People v. Sy*, G.R. No. 171397, 27 September 2006, 503 SCRA 772, 783.

[63] *People v. Eugenio*, 443 Phil. 411, 419 (2003).

[64] *People v. Zheng Bai Hui*, 393 Phil. 68, 136 (2000).

[65] Act No. 4103.

[66] 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.

[67] People v. Quiaoit, Jr., G.R. No. 175222, 27 July 2007, 528 SCRA 474, 489.

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