

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHITO GRATIL Y GUELAS, ACCUSED-APPELLANT.

G.R. No. 182236. June 22, 2011

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is an appeal of the Decision [1] dated October 15, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02338, entitled *People of the Philippines v. Chito Gratil y Guelas*, which affirmed with modification the Decision [2] dated September 25, 2003 of the Regional Trial Court (RTC) of Manila, Branch 53, in Criminal Case No. 97-159609, finding appellant Chito Gratil y Guelas guilty beyond reasonable doubt for violation of Section 15, Article II in relation to Section 20, Article IV of Republic Act No. 6425 (The Dangerous Drugs Act of 1972), as amended, and imposing upon him the penalty of reclusion perpetua.

The conflicting versions of the events which led to the arrest and detention of the appellant were summarized by the trial court, to wit:

Culled from the prosecution's evidence, at around 8:00 o'clock in the morning of said day, a confidential informant arrived at the PNP Central Narcotics Office at EDSA, Quezon City and talked to P/Insp. Nolasco Cortez in the presence of SPO2 Manglo, SPO2 Welmer Antonio, and PO1 Roger Molino regarding the alleged illegal drug activity of one Chito Gratil who is a resident of 765 Agno Bataan, Malate, Manila. Immediately, P/Insp. Cortez formed a team for the purpose of conducting a buy bust operation. SPO2 Manglo was designated as poseur buyer and was given a P500 bill the serial number of which he took and which he also marked with his initial on the side of the face of the person on the bill and also a dot on the nose (Exh. K, K-1, K-2 and K-3). The genuine P500 bill was put on top of boodle money.

At 11:40 o'clock of that same morning, SPO2 Manglo and the confidential informant proceeded to the house of accused Chito Gratil at Agno Bataan, Malate, Manila. The informant entered the house of accused Gratil while SPO2 Manglo waited outside. When the informant emerged from the house, they proceeded to McDonald's at Harrison Plaza where, according to the informant, they would meet with accused Gratil for the final arrangement. After about 5 or 10 minutes, or at around noontime, accused Gratil arrived at the McDonald's Harrison Plaza and talked to the confidential informant. The confidential informant told accused Gratil that the money for the purchase of shabu was already available. Accused Gratil instructed the confidential informant to go to Gratil's house at 4:00 o'clock in the afternoon so that the transaction on the shabu could be completed and that it should be fast because after the transaction he would be going to Bulacan. After the meeting at McDonald's Harrison Plaza, SPO2 Manglo and the informant returned to the Central Narcotics Office and reported to P/Insp. Cortez.

That afternoon, the team composed of P/Insp. Cortez, PO1 Molina, SPO2 Antonio, and SPO2 Manglo together with the confidential informant proceeded to the house of accused Gratil on board a vehicle. At around 4:30 p.m. they reached the vicinity of Bataan, Malate, Manila and the vehicle was parked a distance away from the house of accused Gratil. SPO2 Manglo who was in T-shirt and maong pants and the confidential informant went to the two-storey house of accused Gratil on foot while the three (3) other policemen who were to act as

back up stayed behind. At the ground floor, accused Gratil was waiting. The confidential informant introduced SPO2 Manglo as the buyer to accused Gratil. Upon learning that SPO2 Manglo was the buyer of the 400 grams of shabu which the confidential informant earlier confirmed that morning to be available, accused Gratil begged leave to get the stuff outside: "Saglit lang at kukunin ko" and then left SPO2 Manglo and the confidential informant in the sala of the groundfloor. Ten minutes after, more or less, accused returned and handed over a white plastic bag with the Mercury Drug label to SPO2 Manglo which the latter verified if it contained shabu. He found four heat sealed plastic bags containing crystalline substance. When accused Gratil asked for the money, SPO2 Manglo opened the black clutch bag wherein the boodle money which was about 5 to 6 inches thick with the P500 bill on top was put in and showed it and then handed it to the accused. After accused Gratil received the bag and before he could start counting the money, SPO2 Manglo introduced himself as a NARCOM policeman and then he pulled out his Icom radio which was tucked behind his back and called for back up. Accused Gratil was momentarily shocked by the disclosure of the poseur buyer's true identity and when he recovered his wits and attempted to escape, the back up police officers who were positioned just 15 meters away from the house had arrived in response to the radio call of SPO2 Manglo. Accused Gratil was arrested for selling shabu to a poseur buyer by the team of policemen and in the process SPO2 Antonio recovered from the accused the marked money. SPO2 Manglo turned over the Mercury Bag containing the four heat sealed plastic bags with crystalline substance to P/Insp. Cortez even before they left the house of the accused. From there, they brought the accused together with the shabu and the marked money back to the Central Narcotics Command where the apprehending policemen executed their affidavit of arrest and other related documents in relation to the apprehension of the accused as a consequence of the buy bust operation. To identify the shabu that he purchased from the accused, SPO2 Manglo placed his initials on the plastic bags and after which the letter request for laboratory examination was prepared. The specimen were immediately forwarded to the PNP Crime Laboratory for examination on the same day.

P/Insp. Mary Leocy Jabonillo, a Forensic Chemist of the PNP Crime Laboratory at Camp Crame testified that on August 25, 1997, she performed a laboratory examination of specimen submitted to the PNP Crime Laboratory by way of a letter request dated August 24, 1997 from the Central Narcotics District, PNP NARC GRP, QC (Exh. B). The specimen was contained in One (1) white plastic bag with the "Mercury Drug" label and inside were contained four (4) heatsealed transparent plastic bags with crystalline substance. After a visual examination of the specimen, P/Insp. Jabonillo weighed the four crystalline substance contained in each of the heat sealed plastic bags and came out with the following results:

Exh. `A-1a' - 96.82 grams;

Exh. `A-1b' - 97.02 grams;

Exh. `A-1c' - 96.49 grams;

Exh. `A-1d' - 97.21 grams.

(Exhibit C)

After weighing the specimen, she proceeded to take representative samples from each of the plastic bags which she used in performing a Chemical examination, otherwise known as the color test or screening test. Using the representative samples which she treated with an organic solvent, the specimen reacted with a positive result for methamphetamine hydrochloride, a regulated drug. After conducting the chemical examination, she performed the Confirmatory examination using the Chromatographic technique. Again, the Confirmatory examination showed the presence of methamphetamine hydrochloride, a regulated drug. Immediately after conducting the aforescribed examinations, she reduced the results into writing which are contained in Chemistry Report No. D-2182-97 (Exh. C) and in the Physical Sciences Report (Exh. G).

On the other hand, accused Gratil and Imelda Redolvina testified for the defense. In his defense, accused Gratil gave this version. On August 24, 1997 as early as 8:00 o'clock in the morning, he and his brothers Ricardo, Victor, Norberto, and Armando Gratil were repairing their mother's house at 765 Agno Bataan, Malate, Manila. In the afternoon of the same day, at around 4:00 to 5:00 o'clock, accused Gratil was on his way to his cousin's house

to claim a bareta which was borrowed by said cousin. As he walked towards his cousin's house, he saw people running at an alley (eskinita) going towards him. Suddenly someone grabbed him by the collar and told accused Gratil: "Putangina mo sama ka." Accused Gratil asked: "Bakit po?" And the man holding him said: "Doon ka sa presinto magpaliwanag." He could not do anything and so he was boarded on a vehicle which was parked about a hundred meters away from where he was picked up (nadakma). Inside the vehicle, accused Gratil was threateningly ordered: "Magturo ka!" He answered: "Sino po ang ituturo ko?" He was given a blow to the chest and then threatened: "Isasalvage kita!" Then, he, together with four other persons who were already inside the vehicle before he was boarded were brought to the Narcotics Office at Kamuning, Quezon City.

Imelda Revoldina testified that on August 24, 1997 between the hours of 4:00 and 5:00 in the afternoon she and others were undergoing training for soap making business in front of the Alay Kapwa center. The center was located at the corner of Agno Bataan, Malate, Manila where the house of the accused was also located. At around that time, there was an unusual incident that she witnessed. There were people shouting and running towards them. After the first group of people passed by her, she saw Chito Gratil collared and held by the police. The three policemen who were with accused Gratil were in white T-shirts and dark pants and brought him to a vehicle. Imelda went to the mother of Chito Gratil and told her: "Aling Pasit baka hindi ninyo alam, si Chito nahuli." Chito's mother talked to the policemen but she was told that she can just follow her son to the police station. [3]

The Information [4] dated August 27, 1997 charging appellant with violation of Section 15, Article III, in relation to Section 2(e), (f), (m), and (o), Article I of Republic Act No. 6425, as amended, reads:

That on or about August 24, 1997, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there willfully, unlawfully and feloniously sell or offer for sale One (1) white bag labeled Mercury Drug containing four (4) heatsealed transparent plastic bags each weighing ninety[-]six point eighty[-]two (96.82) grams, ninety[-]seven point zero two (97.02) grams, ninety[-]six point forty[-]nine (96.49) grams and ninety[-]seven point twenty[-]one (97.21) grams, respectively, or a total of three hundred eighty[-]seven point fifty[-]four (387.54) grams of white crystalline substance known as "SHABU" containing methamphetamine hydrochloride, which is a regulated drug.

Upon arraignment on October 23, 1997, appellant pleaded "not guilty" to the charge leveled against him. [5] Thereafter, trial commenced.

In its Decision dated September 25, 2003, the trial court convicted appellant of violation of Section 15, Article III in relation to Section 21, Article I of Republic Act No. 6425, as amended. The dispositive portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Chito Gratil GUILTY beyond reasonable doubt for violation of Section 15, Article III in relation to Section 21, Article I of Republic Act No. 6425, as amended, and is hereby sentenced to Reclusion Perpetua and to pay a fine in the amount of P500,000.00.

Costs against the accused. [6]

On appeal, the Court of Appeals, in its Decision dated October 15, 2007 affirmed the ruling of the trial court but modified the incorrect reference to Section 21, Article I in the dispositive portion of the trial court decision, as follows:

WHEREFORE, the appealed Decision dated September 25, 2003 is affirmed, subject to the correction of the cited Section of RA 6425 as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused Chito Gratil GUILTY beyond reasonable doubt for violation of Section 15, Article III in relation to Section 20, Article IV of

Republic Act No. 6425, as amended, and is hereby sentenced to Reclusion Perpetua and to pay a fine in the amount of P500,000.00.

Costs against the accused. [7]

Hence, the present appeal where appellant puts forward a single assignment of error, to wit:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 15, ARTICLE III, REPUBLIC ACT NO. 6425 DESPITE THE FAILURE OF THE PROSECUTION TO OVERTHROW THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE IN HIS FAVOR. [8]

Appellant argues that the evidence on record does not fully sustain the trial court's findings and conclusions. He maintains that his guilt has not been proven beyond reasonable doubt because of the alleged failure of the prosecution to establish the identity of the prohibited drugs which constitute the corpus delicti of the charges against him, since the proper procedure for taking custody of the seized prohibited drugs was not faithfully followed.

The argument fails to persuade.

In prosecutions involving the illegal sale of drugs, what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug as evidence. For conviction of the crime of illegal sale of prohibited or regulated drugs, the following elements must concur: (1) the identities of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment for it. [9]

A perusal of the records would reveal that the foregoing requisites are present in the case at bar. The proof of the shabu transaction was established by prosecution witness Senior Police Officer (SPO) 2 William Manglo, the poseur-buyer, who made a positive identification of the appellant as the one who gave him the "Mercury Drug" bag and to whom he gave the marked money during the buy-bust operation. The following are the pertinent portions of his testimony made in court:

q:

Will you tell us how did you happen to have buy bust operation against Chito Gratil on August 24, 1997?

a:

On August 24, 1997 according to a confidential agent at 8:00 in the morning the confidential agent told us that he has a contact with alias Chito who is residing at 765 Agno Bataan, Malate, Manila, sir.

Court

q:

This is the residence of Chito Gratil?

a:

Yes, sir.

Fiscal Formoso

q:

You said that it was Pol. Inspector Nolasco who receive the claim from the confidential informant?

a:

We were present when he was about to receive that message, sir.

q:

How was that received?

a:

He came personally in the office, sir.

q:

And when he went did he talk personally with Nolasco Cortez with the presence of who?

a:

SPO2 Welmer Antonio, PO1 Roger Molino and myself, sir.

q:

What time was that when your confidential informant went to your office and talk to Cortez?

a:

August 24 at 8:00 in the morning, sir.

q:

After your confidential informant told Police Inspector Cortez that there is a certain person by the name of Chito Gratil to sell shabu, what did he do?

a:

Chief Nolasco organized a team for operation to conduct operation against Chito Gratil, sir.

q:

What is your specific role as member of the team?

a:

As poseur buyer, sir.

q:

What did you do as poseur buyer?

a:

I was given money to use for our operation, sir.

q:

What is the denomination of that money?

a:

P500.00 bill, sir.

q:

What did you do with the money?

a:

I kept it with me together with the original of the boodle money, sir.

q:

I made a mark on the original of the P500.00 bill, sir.

q:

What part of the P5[0]0.00 bill?

a:

I affixed initial on the side of the face of the person and a dot on the nose, sir.

q:

Aside from making this point on the nose and initial on the face of the person, what else did you do?

a:

I took the serial number, sir.

q:

You took the serial number?

a:

Yes, sir.

q:

If you will see that money again, will you be able to recognize it?

a:

Yes, sir.

x x x x

q:

You said you place a mark or point on the nose, will you tell us where is that point or "tuldok"?

Interpreter

Witness pointing at the tip of the nose of the person and also the initial near the collar of the person.

x x x x

q:

Where is the initial that you placed?

a:

Here it is, sir.

q:

What is the initial?

a:

WEM, sir.

x x x x

q:

After you were able to mark this money, what else did you do?

a:

At about 11:50 in the morning the confidential informant and myself went to the house of the accused, sir.

q:

You and the confidential informant were the one who went to the house of Gratil?

a:

Yes, sir.

x x x x

q:

When you reached the place what did you do there?

a:

We proceeded at Bataan, Malate, Manila, sir.

Court

q:

Did you find him there?

a:

Our confidential informant went inside the house and he was just standing at the street, sir.

Fiscal Formoso

q:

What happened after that?

a:

My confidential informant told me that we will be meeting at Mcdonald's Harrison Plaza that is the place where our final transaction took place, sir.

q:

What time did you report by the way at Mcdonald Harrison?

a:

Almost 11:40 or 11:45 a.m., sir.

q:

What time did this Chito Gratil arrive?

a:

After five minutes about 11:50 a.m., sir.

q:

When Chito Gratil arrived, what happened?

a:

Our confidential informant and this alias Chito were talking to each other that the money to buy shabu is available, sir.

q:

Were you present when this Chito Gratil were talking?

a:

I was about 2 ½ meters, sir.

q:

Were you able to hear what these two (2) were talking about?

a:

Yes, sir.

q:

What did you hear?

a:

Our confidential informant said that the money is ready, sir for shabu and alias Chito Gratil said that you come to my house at 4:00 o'clock in the afternoon and to get avail of the shabu because at that time he will be going to Bulacan, sir.

q:

After this was told by Chito that you have to go in his house did you go there?

a:

After that conversation she went back to our office and I reported them to our team leader P/Insp. Nolasco Cortez, sir.

x x x x

q:

What happened next?

a:

He told me that it is first class shabu and he told me to wait for a while because he will get the shabu and he returned for around 10 minutes, sir.

q:

Where did he go?

a:

He went out of the house, sir.

q:

Were there other persons present when you talked to the accused?

a:

No, sir.

q:

You mean to say that only the three (3) of you went inside the house?

a:

Yes, sir.

q:

After 10 minutes he returned?

a:

Yes, sir, and he has with him with the logo of Mercury and handed to me and told me that that is the 400 grams of shabu, sir.

q:

Then what did you do?

a:

So, when I opened the mercury bag I noticed that there is something that is wrapped in a Chinese newspaper and I opened and examined the contents and I found that it is shabu, sir.

Court

q:

What did you see when you opened the newspaper?

a:

Shabu in four (4) plastic bag and wrapped in a Chinese newspaper, sir.

q:

How big is this?

a:

Ordinary about 3 by 5 inches, sir.

q:

How many bags?

a:

Four (4), sir.

q:

And these bags are transparent?

a:

Yes, sir.

q:

So, it was handed to you this shabu by the accused, what did you do next?

a:

He asked for the payment, so, what I did is to open the bag and handed to him the money, sir. [10]

A comparison with the Joint Affidavit of Arrest [11] executed earlier by SPO2 Manglo, SPO2 Wilmer Antonio and Police Officer (PO) 1 Roger R. Molino and the foregoing testimony, would reveal that both aver the same narrative with regard to the arrest of appellant. The pertinent portions of the said affidavit read as follows:

That on 24 Aug 97, at around 8:00 o'clock in the morning, our male Confidential Informant appeared in our Office and reported to POL INSPECTOR NOLASCO V. CORTEZ PNP that he was able to get in contact with a certain Alyas "CHITO" of 765 Agnoo-Bataan, Malate, Manila and managed to order four hundred (400) grams of shabu in the amount of four hundred thousand (P400,000.00) pesos. That he further stressed that the stuff will be available in the afternoon of the same date. That relative to this report, POL INSP NOLASCO V. CORTEZ PNP organized a team composed of herein affiants with SPO2 Wilmer G. Antonio PNP and PO1 Roger R. Molino PNP as back-up/arresting officer and SPO2 William E. Manglo PNP as the poseur-buyer and furnished with one (1) five hundred (P500.00) peso bill (marked money) with serial number AT485382 and the rest as boodle money representing the amount of Four Hundred Thousand (P400,000.00) pesos to be used in the buy-bust operation;

x x x x

x x x That upon arrival at the house of Alyas "CHITO", I (SPO2 Manglo) was introduced by our CI as the buyer of shabu. Aka "CHITO" then asked me how much quantity of shabu I am going to purchase. That I told him that I am in need of at least four hundred (400) grams of shabu. That Aka "CHITO" told me that the price of 400 grams of shabu is four hundred thousand (P400,000.00) pesos. That I acknowledged his offer and informed him that I am willing to purchase only 400 grams of shabu, if it is already available. That Aka "CHITO" stated that he had 400 grams of shabu available and he asked me if I have with me the money as payment for said stuff, that at this juncture, I opened my bag and showed to him the bundle of buy-money (boodle money) consisting of one (1) genuine five hundred (P500.00) peso bill placed at the top of the bundle of boodle money. When Aka "CHITO" saw the said bundle of purported money, I asked him if I could also examine the shabu before I made the payment and he gave me assurance that his stuff was of good quality, then Aka "Chito" went out of his house to get the stuff while SPO2 Manglo together with the CI stayed inside of the house and after a few minutes, Aka "CHITO" returned back to his house and immediately without further hesitation, handed one (1) white bag (labeled Mercury Drug) containing four (4) heatsealed transparent

plastic bag each with brownish crystalline substance wrapped in a Chinese newsprint and informed the undersigned poseur-buyer that the content of said heatsealed transparent plastic bag is 400 grams of shabu and after examining the content of it, which turn out to be shabu, I took hold of it and Aka "CHITO" demanded the payment. That I handed the buy-bust money (boodle) to him and at this juncture, I introduced to him that I am a Police Officer and before he could get outside of the house in attempting to elude arrest, I called the back-up/arresting officer thru a handheld who responded and effected the arrest of the suspect and SPO2 Antonio recovered from him (Aka "CHITO") custody/possession and control the buy-bust/boodle money.

x x x x

x x x That the suspect was brought to our Office together with the confiscated/seized evidence for proper disposition. (Emphasis supplied.)

Furthermore, the alleged procedural infirmity pointed out by appellant does not prove fatal to the prosecution's case. Section 1 of Dangerous Drugs Board Regulation No. 3, Series of 1979, as amended by Board Regulation No. 2, Series of 1990, which was cited by appellant as the rule of procedure which the arresting police officers did not strictly observe, provides that all prohibited and regulated drugs shall be physically inventoried and photographed in the presence of the accused who shall be required to sign the copies of the inventory and be given a copy thereof, to wit:

Section 1. All prohibited and regulated drugs, instruments, apparatuses and articles specially designed for the use thereof when unlawfully used or found in the possession of any person not authorized to have control and disposition of the same, or when found secreted or abandoned, shall be seized or confiscated by any national, provincial or local law enforcement agency. Any apprehending team having initial custody and control of said drugs and/or paraphernalia, should immediately after seizure or confiscation, have the same physically inventoried and photographed in the presence of the accused, if there be any, and/or his representative, who shall be required to sign the copies of the inventory and be given a copy thereof. Thereafter, the seized drugs and paraphernalia shall be immediately brought to a properly equipped government laboratory for a qualitative and quantitative examination.

The apprehending team shall: (a) within forty-eight (48) hours from the seizure inform the Dangerous Drugs Board by telegram of said seizure, the nature and quantity thereof, and who has present custody of the same, and (b) submit to the Board a copy of the mission investigation report within fifteen (15) days from completion of the investigation. [12]

However, the failure to conduct an inventory and to photograph the confiscated items in the manner prescribed under the said provision of law applicable at the time of appellant's arrest and which is now incorporated as Section 21(1) of Republic Act No. 9165 (The Comprehensive Dangerous Drugs Act of 2002) [13] that repealed Republic Act No. 6425 cannot be used as a ground for appellant's exoneration from the charge against him.

In *People v. De Los Reyes*, [14] a case which also involved an objection regarding the non-compliance with the chain of custody rule, we held that:

The failure of the arresting police officers to comply with said DDB Regulation No. 3, Series of 1979 is a matter strictly between the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case for the reason that the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established (*People v. Santiago*, 206 SCRA 733 [1992]) and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the Dangerous Drugs Board. [15]

Moreover, in *People v. Agulay*, [16] we held that:

Non-compliance with [Section 21, 19 Article II of Republic Act No. 9165] is not fatal and will not render an

accused's arrest illegal or the items seized/confiscated from him inadmissible. In *People v. Del Monte*, this Court held that 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. x x x.[17]

The ponente of Agulay would further observe in a separate opinion that the failure by the buy-bust team to comply with the procedure in Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, [18] which replicated Section 21(1) of Republic Act No. 9165, did not overcome the presumption of regularity accorded to police authorities in the performance of their official duties, to wit:

First, it must be made clear that in several cases decided by the Court, failure by the buy-bust team to comply with said section did not prevent the presumption of regularity in the performance of duty from applying.

Second, even prior to the enactment of R.A. 9165, the requirements contained in Section 21(a) were already there per Dangerous Drugs Board Regulation No. 3, Series of 1979. Despite the presence of such regulation and its non-compliance by the buy-bust team, the Court still applied such presumption. x x x. [19] (Citations omitted.)

Notwithstanding the minor lapse in procedure committed by the police officers in the handling of the illegal drugs taken from appellant, the identity and integrity of the evidence was never put into serious doubt in the course of the proceedings of this case. In fact, SPO2 Manglo categorically testified that the confiscated plastic sachets of "shabu" were marked, turned- over to the police headquarters for investigation, and subjected to laboratory examination. To quote the relevant portion of the transcript:

q:

Kindly examine carefully these separate plastic sachet containing shabu if that is the plastic sachet containing shabu that you bought from the accused Chito Gratil?

a:

Yes, this is the plastic of shabu that I bought from the accused, sir.

q:

Kindly tell us your distinguishing mark?

a:

My initial, sir.

q:

Kindly point to us you initial in these four (4) plastic bags?

Interpreter

Witness pointing to his initial appearing in each four (4) bags which previously marked as Exhibits A-1, A-2, A-3 and A-4.

x x x x

q:

What did you do then in order to identify the shabu the subject of your sale and in order to identify the seller of the shabu?

a:

What we [did] after the sale consummated we placed the marking our initial on the shabu that we bought and we made the corresponding request for the examination in the laboratory where we indicate the name and source of the shabu or the name of the one selling the shabu.

q:

Aside from this referral letter where else did you place the name of the accused?

a:

In the documents prepared by our investigator such as the Booking sheet and Arrest Report, sir. [20]

The marking, turn-over, and laboratory examination of the evidence of illegal drugs were all done on the same day the "shabu" transaction at issue occurred, as indicated in the Memorandum [21] dated August 24, 1997 signed by Police Superintendent Pedro Ongsotto Alcantara PNP who was then the Chief of the Central Narcotics District Office, EDSA, Quezon City. The said memorandum contained a request by P/Supt. Alcantara to the Philippine National Police (PNP) Criminal Investigation Service in Camp Crame, Quezon City for laboratory examination of the items seized from appellant.

Likewise, SPO2 Manglo's testimony was corroborated by Police Inspector Mary Leocy Jabonillo, a forensic chemist of the PNP Crime Laboratory Office in Camp Crame, Quezon City, who testified that when she received the "Mercury Drug" bag containing four plastic bags filled with white crystalline substance, they were already marked and that she also later marked them. Her account on this matter follows:

q:

Will you tell us if what is that specimen which was referred to you for examination?

a:

We received a plastic bag labeled Mercury Drug, sir, containing newspaper and four (4) plastic with white bags containing yellowish substance with the following weights:

Exhibit A-1-A 96.82 grams

Exhibit A-1-B 97.02 grams

Exhibit A-1-C 96.49 grams

Exhibit A-1-D 97.21 grams

with a total of 387.54 grams, sir.

Fiscal Formoso

q:

How was this specimen referred to you for examination?

a:

There was a letter request from the Chief of Narcotics Drug Division, Office, Quezon City, sir.

x x x x

Fiscal Formoso

q:

Now, will you tell this Honorable Court if what did you do after you received the specimen?

a:

I put my markings on the specimen, sir.

q:

Where is that specimen that you received?

Interpreter

Witness is opening the mercury bag and brings out specimen in four (4) separate plastic bags and wrapped in Chinese newspaper.

Fiscal Formoso

q:

Will you tell this honorable court if that was the very condition of this specimen when you received it?

a:

Yes, sir.

q:

And it was already marked when you received it?

a:

Yes, sir, and I have also my own markings.

x x x x

Fiscal Formoso

q:

Now, when you received these four (4) plastic bags, what did you do then?

a:

After putting my marking, I got a sample and proceeded to physical examination, Your Honor, and after conducting that physical examination all specimen gave positive result, sir, for methamphetamine hydrochloride. [22]

In response to the accusation leveled against him, appellant only managed to set up the defense of bare denial. According to his version of the story, appellant maintains that he was forcibly abducted while on his way to a cousin's house and was later thrown inside a vehicle where he was beaten up and threatened with execution before he was brought to the police station. In short, appellant insists that he was a victim of frame-up.

As we have time and again held, the defense of denial or frame-up, like alibi, has been invariably viewed with disfavor for it can easily be concocted and is a common defense in most prosecutions for violation of the Dangerous Drugs Act. [23] Charges of extortion and frame-up are frequently made in this jurisdiction. Courts are, thus, cautious in dealing with such accusations, which are quite difficult to prove in light of the presumption of

regularity in the performance of the police officers' duties. To substantiate such defense, which can be easily concocted, the evidence must be clear and convincing and should show that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty. Otherwise, the police officers' testimonies on the operation deserve full faith and credit. [24]

In the case at bar, no clear and convincing evidence to support the defense of frame-up was put forward by appellant. Neither was there any imputation or proof of ill motive on the part of the arresting police officers. Even the testimony of defense witness Imelda Revoldina failed to establish any irregularity in the conduct of the apprehending police officers in this case. In fact, her neutral testimony that she saw the police officers hold the collar of appellant while leading him into a vehicle tended to support the prosecution's assertion that appellant was arrested in plain view as a consequence of his act of selling illegal drugs.

As appellant failed to show any reversible error on the part of the lower courts in the resolution of this case, his conviction must be upheld.

WHEREFORE, premises considered, the Decision dated October 15, 2007 of the Court of Appeals in CA-G.R. CR.-H.C. No. 02338 is hereby AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Del Castillo, Perez, and Mendoza,[*] JJ., concur.

[*] Per Special Order No. 1022 dated June 10, 2011.

[1] Rollo, pp. 2-16; penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Edgardo P. Cruz and Normandie B. Pizarro, concurring.

[2] CA rollo, pp. 17-21.

[3] Id. at 17-20.

[4] Id. at 8.

[5] Records, p. 28.

[6] CA rollo, p. 21.

[7] Rollo, p. 15.

[8] CA rollo, p. 78.

[9] *People v. Ventura*, G.R. No. 184957, October 27, 2009, 604 SCRA 543, 554-555.

[10] TSN, April 15, 1998, pp. 6-24.

[11] Records, pp. 9-10.

[12] Cited in *People v. Gonzaga*, G.R. No. 184952, October 11, 2010; *People v. Kimura*, 471 Phil. 895, 918 (2004).

[13] (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.

[14] G.R. No. 106874, January 21, 1994, 229 SCRA 439.

[15] Id. at 447.

[16] G.R. No. 181747, September 26, 2008, 566 SCRA 571.

[17] Id. at 595.

[18] (a) The apprehending officer/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: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

[19] *People v. Agulay*, supra note 16 at 622-623.

[20] TSN, August 29, 2001, pp. 6-16.

[21] Records, p. 192.

[22] TSN, April 2, 1998, pp. 3-7.

[23] *People v. Gutierrez*, G.R. No. 177777, December 4, 2009, 607 SCRA 377, 390.

[24] *People v. Capalad*, G.R. No. 184174, April 7, 2009, 584 SCRA 717, 727.

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