

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALFREDO LAZARO, JR. A.K.A JUN LAZARO Y AQUINO, ACCUSED-APPELLANT.

G.R. No. 186418. October 16, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

For review is the Decision[1] dated 18 July 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02258 which affirmed with modification the Decision[2] dated 27 April 2006 of the Regional Trial Court (RTC), Branch 61, Baguio City, in Criminal Cases No. 23227-R, No. 23228-R and No. 23229-R, finding accused-appellant Alfredo Lazaro, Jr. a.k.a Jun Lazaro y Aquino guilty of illegal sale, possession and use of methamphetamine hydrochloride, popularly known as shabu, under Sections 5, 11, and 15, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The facts gathered from the records are as follows:

On 17 June 2004, two separate informations were filed before the RTC against appellant for illegal sale and possession of shabu under Sections 5 and 11, Article II of Republic Act No. 9165. The accusatory portion of the informations read:

Criminal Case No. 23227-R

The undersigned accuses ALFREDO LAZARO, JR. a.k.a JUN LAZARO y AQUINO for VIOLATION OF SECTION 5, ARTICLE II OF REPUBLIC ACT 9165 otherwise known as the COMPREHENSIVE Dangerous Drugs Act of 2002, committed as follows:

That on June 15, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, x x x, and without authority of law, did then and there willfully, unlawfully and feloniously sell, distribute and/or deliver One (1) small heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride known as Shabu in the amount of P3,000.00 [should be P300], weighing 0.05 gram to Poseur Buyer SPO1 Dennis G. Indunan, knowing fully well that said Methamphetamine Hydrochloride known as Shabu is a dangerous drug, in violation of the aforementioned provision of law.[3]

Criminal Case No. 23229-R

The undersigned accuses JUN LAZARO y AQUINO for VIOLATION OF SECTION 11, ARTICLE II OF REPUBLIC ACT 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 committed as follows:

That on June 15, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused x x x, did then and there willfully, unlawfully and feloniously have in his possession and control One (1) small heat sealed transparent plastic sachet containing Methamphetamine Hydrochloride known as Shabu weighing 0.04 gram, a dangerous drug, without the corresponding license or prescription in violation of the aforecited provision of law.[4]

On 18 June 2004, an information was filed with the RTC against appellant for illegal use of shabu under Section 15, Article II of Republic Act No. 9165, thus:

Criminal Case No. 23228-R

The undersigned accuses JUN LAZARO for VIOLATION OF SECTION 15 [ARTICLE II] OF REPUBLIC ACT 9165 [otherwise known as the Comprehensive Dangerous Drugs Act of 2002], committed as follows:

That on or about the 15[th] day of June, 2004, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously use Dangerous Drugs particularly Methamphetamine per the result of a Qualitative Examination conducted on the urine sample taken from him, in violation of the aforecited provision of law.[5]

Subsequently, these cases were consolidated. When arraigned on 28 June 2004, appellant, assisted by counsel de oficio, pleaded "Not guilty" to each of the charges.[6] Trial on the merits thereafter followed.

The prosecution presented as witnesses Police Senior Inspector Hordan T. Pacatiw, Senior Police Officer (SPO) 1 Dennis G. Indunan, SPO1 Emerson A. Lingbawan and PO3 Paulino A. Lubos, all of whom are members of the Philippine National Police and were assigned at the Criminal Investigation and Detection Group, Anti-Illegal Drugs Team unit, Baguio City. Their testimonies, taken together, bear the following:

On 15 June 2004, at about 12:30 p.m., an informant went to the Criminal Investigation and Detection Group (CIDG), Anti-Illegal Drugs Team unit (AIDT), Baguio City, and reported to PO3 Paulino Lubos (PO3 Lubos) the drug trafficking activities of appellant in Central Bakakeng, Baguio City. PO3 Lubos relayed the information to Police Senior Inspector Hordan T. Pacatiw (Inspector Pacatiw), head of AIDT, who in turn, referred the matter to Senior Superintendent Marvin V. Bolabola (Superintendent Bolabola), chief of CIDG, Baguio City, for appropriate action. Superintendent Bolabola formed a team and planned a buy-bust operation. The team was composed of Inspector Pacatiw who would act as the team leader; SPO1 Dennis G. Indunan (SPO1 Indunan) as the poseur-buyer; PO3 Lubos as the seizing officer; and SPO1 Emerson A. Lingbawan (SPO1 Lingbawan) as the arresting officer. Superintendent Bolabola handed SPO1 Indunan three One Hundred Peso (P100.00) bills to be utilized as buy-bust money. SPO1 Indunan marked the monies with "DG-06-15-04." Thereafter, the team coordinated the planned buy-bust operation with the Philippine Drug Enforcement Agency (PDEA).

At around 2:30 p.m. of the same date, the team, together with the informant, went to appellant's house at 181 Km. 3, Central Bakakeng, Baguio City. Upon arriving thereat, the informant and SPO1 Indunan saw appellant standing at the balcony of the third floor of the three-storey house. The informant proceeded inside appellant's house and talked with appellant at the balcony of the third floor, while SPO1 Indunan stood outside the house at a distance of 10 meters. The rest of the team positioned themselves outside appellant's house at a distance of 25 meters. Later, the informant signaled SPO1 Indunan to approach him and appellant at the balcony of the third floor. Thereupon, the informant introduced SPO1 Indunan to appellant as user and buyer of shabu. The informant subsequently excused himself and left SPO1 Indunan and appellant. Appellant then asked SPO1 Indunan how much worth of shabu he would want to buy. SPO1 Indunan answered he would like to purchase three hundred pesos (P300.00) worth of shabu. Appellant knocked at the door of a room in the balcony and called a certain "Bong." Bong is appellant's brother whose full name is Ferdinand Bong Lazaro. A man opened the door and handed a green box to appellant. Appellant opened the green box, took a plastic sachet from it, handed the plastic sachet to SPO1 Indunan, and demanded payment from the latter. After examining the contents of the plastic sachet and believing that the same contained shabu, SPO1 Indunan gave the three marked one hundred peso bills to appellant. At this juncture, SPO1 Indunan removed his sunglasses and placed it in his pocket as pre-arranged signal to the other members of the team.

The other members of the team rushed to the crime scene and identified themselves as police officers. Appellant tried to resist arrest but he was subdued by the team. Inspector Pacatiw then apprised appellant of his constitutional rights. Afterwards, SPO1 Indunan frisked and recovered from appellant the buy-bust money and the green box which contained another plastic sachet with white substance. SPO1 Indunan marked with "DG-06-15-04" the plastic sachet containing white substance sold to him by appellant, as well as the plastic sachet with white substance found inside the green box.

Meanwhile, Inspector Pacatiw knocked at the door of a room on the balcony and called on Bong to open the door but to no avail. Inspector Pacatiw and some members of the team then forcibly opened the door. Although the team found no one inside the room, they, however, subsequently saw a man, whom they believed to be Bong, running down the basement of the house and exiting through its back door. The man then disappeared.

Thereafter, the team discovered and seized at the third floor of the house several drug paraphernalias. The team made a written inventory on said paraphernalias, as well as the plastic sachet sold by appellant to SPO1 Indunan and the plastic sachet recovered in appellant's possession, in the presence of representatives from media, the Department of Justice (DOJ) and the barangay. Said representatives signed the inventory document on the seized items. Inspector Pacatiw took custody of the said seized items.

The team immediately brought appellant, as well as the items seized, to the office of the CIDG, Baguio City. Thereupon, the team made a booking sheet, arrest report, a "Joint Affidavit of Arrest" and an "Affidavit of Poseur-Buyer" as regards the buy-bust operation. Superintendent Bolabola made a written request for physical examination of appellant to the PNP Benguet Provincial Crime Laboratory Office. After conducting a physical examination on appellant, Dr. Elizardo D. Daileg, medico-legal officer of the PNP Benguet Provincial Crime Laboratory Office, issued a medico-legal certificate attesting that no injuries were found on appellant's body. Superintendent Bolabola also made separate written requests to the PNP Benguet Provincial Crime Laboratory Office for drug test on appellant and a laboratory examination on the plastic sachet containing white substance sold by appellant to SPO1 Indunan and the plastic sachet with white substance found in appellant's possession. After conducting a laboratory examination on the urine sample taken from appellant, Police Officer 1 Juliet Valentin Albon, Forensic Analyst of the PNP Benguet Provincial Crime Laboratory Office (Forensic Analyst Albon), issued a report stating that appellant was positive for shabu. Likewise, after making laboratory tests, Forensic Analyst Albon issued a chemistry report certifying that the plastic sachet sold by appellant to SPO1 Indunan contained 0.05 gram of shabu while the plastic sachet recovered from appellant's possession contained 0.04 gram of shabu.[7]

The prosecution also adduced documentary and object evidence to buttress the testimonies of its witnesses, to wit: (1) joint affidavit of the arresting officers signed by Inspector Pacatiw, SPO1 Lingbawan and PO3 Lubos (Exhibit A);[8] (2) affidavit of the poseur-buyer signed by SPO1 Indunan (Exhibit B);[9] (3) booking sheet and arrest report for appellant (Exhibit C);[10] (4) request to conduct laboratory examination on the two plastic sachets recovered from appellant which was signed by Superintendent Bolabola;[11] (5) request for drug test on appellant signed by Superintendent Bolabola (Exhibit D);[12] (6) request for physical examination on appellant signed by Superintendent Bolabola (Exhibit E);[13] (7) medico-legal certificate signed by Dr. Daileg (Exhibit E-1);[14] (8) chemistry report on the drug test of appellant signed by Forensic Analyst Albon (Exhibit H);[15] (9) chemistry report on the content of plastic sachet sold by appellant to SPO1 Indunan and the content of the plastic sachet recovered from possession of appellant signed by Forensic Analyst Albon (Exhibit I);[16] (10) inquest disposition issued by the Office of the City Prosecutor, Baguio City (Exhibit J);[17] (11) written inventory on the items seized from appellant signed by representatives from the media, DOJ and barangay (Exhibit M);[18] (12) coordination sheet with the PDEA (Exhibit N);[19] (13) receipt of the items seized from appellant signed by the

members of the buy-bust team (Exhibit O);[20] (14) two plastic sachet containing shabu sold by and recovered from the possession of appellant (Exhibit K);[21] and (15) buy-bust money confiscated from appellant (Exhibit L).[22]

For its part, the defense proffered the testimonies of appellant and his father, namely Alfredo Lazaro, Sr. to refute the foregoing accusations. Appellant denied any liability and claimed he was framed.

Appellant testified that on 15 June 2004, between 2:00 p.m. to 3:00 p.m., he was sleeping in his room at the third floor of a three-storey house located at 181 Km. 3, Central Bakakeng, Baguio City. He was roused from his sleep by the barking of dogs outside his house. He opened the door of his room and saw PO3 Lubos, Inspector Pacatiw, SPO1 Lingbawan, SPO1 Indunan and some members of the CIDG, Baguio City, namely Warren Lacangan, Jojo Unata and Jun Digula approaching. PO3 Lubos tried to hit him with the gun but he evaded it. Inspector Pacatiw hit him several times in the stomach with a gun. Said policemen kicked him several times causing him to fall on the floor. Thereafter, the policemen destroyed the door of his brother's (Ferdinand Bong Lazaro) room and entered therein. He was dragged inside the said room. Inspector Pacatiw, SPO1 Lingbawan and PO3 Lubos then took the laptop, diskman, Buddha coin bank and power tools inside the room. Subsequently, the policemen brought him to the second floor of the house where he saw Jade Salazar (Jade), the live-in partner of his brother, Renato Lazaro. The policemen apprehended Jade, took the latter's bag and a green box, and asked her the whereabouts of Bong. He and Jade were later brought to the CIDG office, Baguio City. Thereupon, the policemen took his wallet, demanded an amount of P200,000.00, and told him to contact Bong so that the latter may help him settle his case.

While appellant and Jade were being held at CIDG office, Baguio City, a certain Rosita Salazar (Salazar), allegedly a Municipal Trial Court (MTC) Judge from Abra and Jade's grandmother, arrived and introduced herself to the policemen. The policemen ignored Salazar as the latter did not have any identification card. The policemen then brought appellant and Jade to the PNP Benguet Provincial Crime Laboratory Office where they were subjected to physical examination. Upon their return to the CIDG office, the policemen showed them three plastic sachets of shabu which would be used against them as evidence. Later, however, appellant learned that Jade was released by the policemen in exchange for a certain amount of money. During his detention in the CIDG office, he saw PO3 Lubos preparing the marked money. At that point, he realized that a case would be filed against him in court.

Appellant denied having sold to SPO1 Indunan one plastic sachet containing 0.05 gram of shabu on 15 June 2004. He claimed that it was impossible for the back-up members of the buy-bust team to have witnessed his alleged sale of shabu to SPO1 Indunan because there were big trees beside the three-storey house which blocked the view of persons on the ground looking up to the balcony of the third floor. He denied having received from Bong a green box during the alleged buy-bust and averred that Jade owned the green box.[23]

Alfredo Lazaro, Sr., appellant's father, testified that on 15 June 2004, at about 2:00 p.m., he was watching television inside his room at the third floor of the three-storey house situated at 181 Km. 3, Central Bakakeng, Baguio City. Later, he heard the barking of dogs outside the house. Curious, he opened the door of his room. He then saw PO3 Lubos and several policemen mauling appellant. Shocked, he uttered "apay dayta?" (Why is that?). PO3 Lubos and the policemen stopped beating appellant. As he was already experiencing chest pains, he returned to his room. Subsequently, he saw the policemen carrying a backpack and a plastic bag the contents of which belonged to Bong.[24]

The defense also submitted a written undertaking of Jade and a receipt of custody signed by Salazar in support of its contentions.[25]

After trial, the RTC rendered a Decision convicting appellant in all of the criminal cases. In Criminal Case No.

23227-R, appellant was found guilty of violating Section 5 of Republic Act No. 9165 (illegal sale of shabu) and was sentenced to life imprisonment. He was also ordered to pay a fine of P500,000.00. On the other hand, in Criminal Case No. 23228-R, appellant was found guilty of violating Section 15 of Republic Act No. 9165 (illegal use of shabu) and was penalized with six months drug rehabilitation in a government center. With respect to Criminal Case No. 23229-R, appellant was found guilty of violating Section 11 of Republic Act No. 9165 (illegal possession of shabu) and was meted an imprisonment of twelve (12) years and one (1) day as minimum, to fifteen (15) years, as maximum. He was further ordered to pay a fine of P300,000.00.

Appellant appealed to the Court of Appeals. On 18 July 2008, the Court of Appeals promulgated its Decision partly granting the appeal. The appellate court affirmed the conviction of appellant in Criminal Cases No. 23227-R and No. 23229-R. However, it reversed the RTC's ruling in Criminal Case No. 23228-R by acquitting appellant in the said criminal case.

Appellant filed a Notice of Appeal on 12 August 2008.[26]

In his Brief[27] and Supplemental Brief,[28] appellant assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT;

II.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES WHILE TOTALLY DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE;

III.

THE TRIAL COURT ERRED IN DISREGARDING THE PROSECUTION'S FAILURE TO COMPLY WITH THE PROCEDURES LAID DOWN IN RA 9165.[29]

In the main, appellant argues that the prosecution failed to establish his guilt for illegal sale and possession of shabu.

To secure a conviction for illegal sale of shabu, the following essential elements must be established: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment thereof. In prosecutions for illegal sale of shabu, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence.[30] In the case at bar, the prosecution was able to establish, through testimonial, documentary and object evidence, the said elements.

SPO1 Indunan, the poseur-buyer, testified that appellant sold to him shabu during a legitimate buy-bust operation.[31] Per chemistry report of Forensic Analyst Albion, the substance, weighing 0.05 gram, which was bought by SPO1 Indunan from appellant for P300.00, was examined and found to be methamphetamine hydrochloride or shabu. SPO1 Indunan narrated the transaction with appellant as follows:

Q

What happened next when you were already at the residence of the accused?

A

When we were near the house, we saw a man standing at the balcony, Sir.

Q

How many storeys is the house of the accused?

A

About three (3), Sir.

Q

Where is the balcony where the man was standing?

A

At the third floor, Sir.

Q

What happened next?

A

The Informant told me to wait first and he would go ahead and talk to Jun, Sir.

Q

What happened next?

A

After talking, the Informant signaled me to go near them, sir.

x x x x

Q

What happened next?

A

The Informant signaled me to go near them, Sir.

x x x x

Q

What happened next?

A

I was introduced to Jun as user and buyer of shabu, Sir.

Q

Were you introduced by name?

A

No, Sir.

Q

What happened next?

A

The Informant excused himself, Sir.

Q

And then?

A

We talked with Jun and asked me how much will I buy, Sir.

Q

In what language or dialect?

A

Tagalog, Sir.

Q

How?

A

"Magkano bang bibilhin mo" and I said "tatlong daan lang," Sir.

Q

What happened next?

A

He knocked at the door and called out for "Bong." Sir.

Q

What happened next?

A

Bong opened the door and handed Jun something a green box, Sir.

Q

How did you know that it was Bong?

A

That is what I heard, Sir.

Q

Were you able to see the face of Bong during that time?

A

Yes, Sir.

Q

After Bong had opened the door, what happened next? All this time you were beside Jun?

A

Yes, Sir.

Q

What happened next after the green box was handed to Jun?

A

The person told Jun "eto na yong box," Sir.

Q

What happened next?

A

And Jun opened the box and brought out one (1) plastic sachet and handed it to me and demanded for the payment, Sir.

Q

How?

A

He said "akina yong bayad," Sir.

Q

After he handed to you that sachet and asked for the payment what did you say also?

A

I first examined the content and after believing that it was shabu, I handed the marked money, Sir.

x x x x

Q

After that what happened next?

A

After handling him the money, I gave the pre-arranged signal, Sir.

Q

What was your pre-arranged signal?

A

By removing my sunglasses and placing it in my pocket, Sir.

Q

After you have made the signal what happened next?

A

My back-up team rushed to where I am (sic), Sir.

x x x x

PROS. CATRAL:

Q

The subject of your operation you already know him initially as Jun, did you eventually come to know his full name?

A

Yes, Sir.

Q

What is his full name?

A

Jun Aquino Lazaro, Sir.

Q

If Jun Aquino Lazaro is in the courtroom would you be able to identify him?

A

Yes, Sir.

INTERPRETER:

Witness pointed to a male person who gave his name as Jun Lazaro.[32]

Inspector Pacatiw, SPO1 Lingbawan and PO3 Lubos corroborated the aforesaid testimony of SPO1 Indunan on relevant points.

The prosecution adduced as its documentary and object evidence the transparent plastic sachet of shabu sold by appellant to SPO1 Indunan during the buy-bust operation, the chemistry report of Forensic Analyst Albon confirming that the plastic sachet sold by appellant to SPO1 Indunan contained 0.05 gram of shabu, and the marked money used during the buy-bust operation.

Parenthetically, in illegal possession of dangerous drugs, such as shabu, 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.[33] All these elements have been established. SPO1 Indunan testified that after appellant sold to him shabu, he (SPO1 Indunan) and the members of the buy-bust team arrested appellant. He then frisked appellant and recovered from the latter a green box which contained plastic sachet with white granules. The chemistry report of Forensic Analyst Albon confirms that such plastic sachet found inside the green box contains 0.04 gram of shabu. The relevant portion of the testimony of SPO1 Indunan is as follows:

Q

What happened next?

A

After we controlled Jun we brought him to our office, Sir.

Q

Immediately?

A

Yes, Sir.

Q

He was not searched at the area of operation?

A

He was searched, Sir.

Q

Who searched him?

A

I, Sir.

Q

What was the result of your search?

A

I was able to find the marked money, Sir.

Q

Aside from the money what else did you recover from the person?

A

The content of the box there is still one (1) sachet, Sir.

Q

If this sachet which you recovered from the accused will be shown to you again will you be able to identify it?

A

Yes, Sir.

Q

How sure are you that you would be able to identify it?

A

I placed my initials, Sir.

Q

I am showing to you another sachet, please tell us if this is the same sachet that you said that was confiscated?

A

Yes, Sir.

Q

Please point to your initial?

A

Yes, Sir.

Q

When did you place that?

A

After the arrest of the accused, Sir.

PROS. CATRAL:

The other sachet may we pray that this be marked as Exhibit "K-1", your Honor.

COURT:

Mark it please.[34]

The testimonies of the prosecution witnesses regarding appellant's illegal sale and possession of shabu are consistent with the documentary and object evidence submitted by the prosecution. The RTC and the Court of Appeals found the testimonies of the prosecution witnesses to be credible. Both courts also found no ill motive on their part to testify against appellant.

The rule is that the findings of the trial court on the credibility of witnesses are entitled to great respect because trial courts have the advantage of observing the demeanor of the witnesses as they testify. This is more true if such findings were affirmed by the appellate court. When the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon this Court.[35]

To rebut the overwhelming evidence for the prosecution, appellant interposed the defense of denial and frame-up. Appellant denied he sold shabu to SPO1 Indunan and he possessed a green box containing shabu during the buy-bust operation. He claimed that said green box was seized from Jade and that the arresting officers tried to extort money from him in exchange for his freedom.

The defenses of denial and frame-up have been invariably viewed by this Court with disfavor for it can easily be concocted and is a common and standard defense ploy in prosecutions for violation of Dangerous Drugs Act. In order to prosper, the defenses of denial and frame-up must be proved with strong and convincing evidence.[36] In the cases before us, appellant failed to present sufficient evidence in support of his claims. Aside from his self-serving assertions, no plausible proof was presented to bolster his allegations.

It is true that appellant submitted a written undertaking of Jade and a receipt of custody signed by alleged Abra MTC Judge Salazar in support of his contentions that the green box was seized from Jade and that he was framed. Nonetheless, there was nothing in said documents which proved his defenses. In the said undertaking, Jade merely

declares (1) that on 15 June 2004, at about 2:30 p.m., she was apprehended in the house of appellant by the officers of the CIDG, Baguio City, for alleged violation of Republic Act No. 9165; (2) that she was informed of her constitutional rights by the CIDG officers; (3) that she was humanely treated by the CIDG officers during her investigation and that none of her personal property was taken or damaged by said officers; (4) that she had no complaint whatsoever against the CIDG officers; and (5) that she promised to appear if called upon in the investigation regarding said incident. On the other hand, the receipt of custody signed by Salazar merely states (1) that she received in good health the living person of Jade from the custody of CIDG, Baguio City; and (2) that she promised to present Jade for investigation as regards the incident if required by the proper authorities. Indeed, the above-cited documents merely describe the circumstances and conditions of Jade during and after the incident. There was no reference at all to appellant's claim that the green box was seized from Jade and that he was framed.[37]

Further, it should be noted that appellant has not filed a single complaint for frame-up or extortion against the buy-bust team. This inaction clearly betrays appellant's claim of frame-up.

Appellant imputes ill motive on the part of the buy-bust team by asseverating that he had a previous quarrel with PO3 Lubos and that he knows some members of the buy-bust team. Withal, this allegation is uncorroborated and unsubstantiated. Hence, the imputation of improper motive should be negated. When the police officers involved in the buy-bust operation have no motive to testify against the accused, the courts shall uphold the presumption that they have performed their duties regularly.[38]

Moreover, motive is not essential for conviction for a crime when there is no doubt as to the identity of the culprit, and that lack of motive for committing the crime does not preclude conviction for such crime when the crime and participation of the accused are definitely proved.[39] In the instant cases, SPO1 Indunan positively identified appellant as the one who sold to him shabu during the buy-bust operation. He also testified that he recovered shabu from appellant's possession during said incident.

The defense presented appellant's father, Alfredo Lazaro, Sr. to corroborate appellant's version of the incident. Initially, it must be emphasized that the testimony of Alfredo Lazaro, Sr. should be received with caution he being the father of appellant.[40] Alfredo Lazaro, Sr. testified that upon opening the door of his room, he saw PO3 Lubos and some policemen beating appellant. He uttered "apay dayta?" (Why is that?), left the scene, and went back to his room. There was no testimony at all from him that he tried to restrain PO3 Lubos and the policemen from mauling appellant, or that he immediately called or sought the help of barangay officials or higher authorities. His court statement hardly inspires belief as it would be highly unnatural for a father not to react defensively or sought help if his child is being maltreated in his presence. In addition, the physical examination report on appellant states that no injuries were observed on appellant's body immediately after his arrest. His testimony, therefore, deserves scant consideration.

Given the foregoing circumstances, the positive and credible testimonies of the prosecution witnesses prevail over the defenses of denial and frame-up of appellant.

Appellant tried to cast doubt on the credibility of the prosecution witnesses based on the following reasons: (1) there was inconsistency in the testimonies of the prosecution witnesses as to what language was used in apprising appellant of his constitutional rights; (2) the informant was not presented as witness during the trial; and (3) there was no buy-bust operation because appellant was merely instigated by the informant to sell shabu to SPO1 Indunan.[41]

For a discrepancy or inconsistency in the testimony of a witness to serve as basis for acquittal, it must refer to the significant facts vital to the guilt or innocence of the accused for the crime charged. An inconsistency which has

nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused.[42]

The inconsistency cited by appellant refers to trivial matter and is clearly beyond the elements of illegal sale of shabu because it does not pertain to the actual buy-bust itself - that crucial moment when appellant was caught selling shabu. Such inconsistency is also irrelevant to the elements of illegal possession of shabu. Besides, the inconsistency even bolsters the credibility of the prosecution witnesses as it erased any suspicion of a rehearsed testimony.[43]

Anent the failure of the prosecution to present the testimony of the informant, it is well-settled that the testimony of an informant in drug-pushing cases is not essential for conviction and may be dispensed if the poseur-buyer testified on the same.[44]

As to the claim of instigation, where the police or its agent lures the accused into committing the offense in order to prosecute him and which is deemed contrary to public policy and considered an absolutory cause,[45] there is nothing in the records which clearly and convincingly shows that appellant was instigated by the informant to sell shabu to SPO1 Indunan. What is apparent therein is that the informant merely introduced SPO1 Indunan to appellant as a user and buyer of shabu and that the informant did not in any way allure or persuade appellant to sell shabu to SPO1 Indunan.[46] Also, after such introduction, it was appellant who hastily asked SPO1 Indunan how much worth of shabu the latter would want to buy.[47] This obviously manifests that the idea to sell shabu originated from appellant without any instigation from SPO1 Indunan or the informant. Indeed, what have transpired in the instant case was a legitimate buy-bust operation and not instigation. A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid means of arresting violators of the Dangerous Drugs Law. It is commonly employed by police officers as an effective way of apprehending law offenders in the act of committing a crime. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense.

Appellant further posits that the prosecution did not strictly comply with the procedures laid down in Section 21, Article II of Republic Act No. 9165 because: (1) although the written inventory of the seized items bore signatures of representatives from the DOJ, the media, and the barangay, only the representative from the media was named; (2) no pictures of the seized items were taken; (3) Forensic Analyst Albion did not testify with regard to her chemistry report on the subject drugs; (4) there were gaps in the chain of custody of the subject drugs because the officer who received the request for laboratory examination of the same did not testify, and the custodian of the subject drugs from the time they were examined up to their presentation in trial was not identified; and (5) the prosecution failed to show the condition of the subject drugs and the precautions taken in preserving their condition.[48]

It should be noted that appellant raised the buy-bust team's alleged non-compliance with Section 21, Article II of Republic Act No. 9165 for the first time on appeal. This, he cannot do. It is too late in the day for him to do so. In *People v. Sta. Maria*[49] in which the very same issue was raised, we held:

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal." (Emphases supplied.)

Moreover, we have held in several cases[50] that non-compliance with Section 21, 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. 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.[51] In the present case, the integrity of the drugs seized from appellant was preserved. The chain of custody of the drugs subject matter of the instant case was shown not to have been broken.

Records revealed that after SPO1 Indunan confiscated two transparent plastic sachets containing shabu from appellant, he marked each of the two sachets of shabu with "DG-06-15-04" and turned them over to Superintendent Bolabola, who, in turn, handed them to Inspector Pacatiw who brought the same to PO1 Guingahan of CIDG office, Baguio City. The latter then delivered the two plastic sachets each marked with "DG-06-15-04" to the PNP Benguet Provincial Crime Laboratory Office for laboratory examination. The same two sachets were received by SPO1 Carino of PNP Benguet Provincial Crime Laboratory Office.[52] After a qualitative examination conducted on the contents of the two sachets each marked "DG-06-15-04," Forensic Analyst Albion found them to positive for methamphetamine hydrochloride or shabu. Upon being weighed, the one plastic sachet sold by appellant to SPO1 Indunan was found to be containing 0.05 gram while the other plastic sachet found in appellant's possession was determined to have 0.04 gram of shabu.

When the prosecution presented the two sachets of shabu each marked with "DG-06-15-04," SPO1 Indunan positively identified them as the very same sachets he bought and recovered from appellant in the buy-bust operation. The two plastic sachets containing 0.05 and 0.04 gram of shabu, respectively, each had the marking "DG-06-15-04" as attested by Forensic Analyst Albion in her chemistry report. The existence, due execution, and genuineness of the said chemistry report, as well as the qualifications of Forensic Analyst Albion were admitted by the defense.[53] Further, SPO1 Indunan categorically declared during the trial that he put "DG-06-15-04" marking on each of the two transparent plastic sachets of shabu recovered from appellant. Clearly, the identity of the drugs recovered from appellant has been duly preserved and established by the prosecution.

The fact that Forensic Analyst Albion and the persons who had possession or custody of the subject drugs were not presented as witnesses to corroborate SPO1 Indunan's testimony is of no moment. The prosecution dispensed with the testimony of Forensic Analyst Albion because the defense had already agreed in the substance of her testimony to be given during trial, to wit: (1) that she examined the subject drugs; (2) that she found them to be positive for shabu; and (3) that she prepared and issued a chemistry report pertaining to the subject drugs.

Further, not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such a requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.[54] In *People v. Zeng Hua Dian*,[55] we ruled:

After a thorough review of the records of this case, we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

Since appellant's violation of Sections 5 and 11, Article II of Republic Act No. 9165 were duly established by the prosecution's evidence, we shall now ascertain the penalties imposable on him.

Under Section 5, Article II of Republic Act No. 9165, the unauthorized sale of shabu, regardless of its quantity and purity, carries with it the penalty of life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (P500,000.00) to Ten Million Pesos (P10,000,000.00).

Pursuant, however, to the enactment of Republic Act No. 9346 entitled, "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine shall be imposed. Thus, the RTC and the Court of Appeals were correct in imposing the penalty of life imprisonment and fine of P500,000.00 on appellant in Criminal Case No. 23227-R.

Section 11(3), Article II of Republic Act No. 9165 provides that illegal possession of less than five grams of shabu is penalized with imprisonment of twelve (12) years and one day to twenty (20) years, plus a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00).

Appellant was charged with and found to be guilty of illegal possession of 0.04 gram of shabu in Criminal Case No. 23229-R. Hence, the RTC and the Court of Appeals aptly sentenced appellant to imprisonment of 12 years and one day, as minimum, to 15 years, as maximum, and fined him P300,000.00, since said penalties are within the range of penalties prescribed by the aforequoted provision.

WHEREFORE, the Decision dated 18 July 2008 of the Court of Appeals in CA-G.R. CR-HC No. 02258 is hereby AFFIRMED in toto.

SO ORDERED.

Carpio Morales,[*] Nachura, Leonardo-De Castro,**] and Abad,***] JJ., concur.

[*] Per Special Order No. 744, dated 14 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Conchita Carpio Morales to replace Associate Justice Antonio T. Carpio, who is on official leave.

**] Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 20 April 2009.

***]Per Special Order No. 753, dated 13 October 2009, signed by Chief Justice Reynato S. Puno designating Associate Justice Roberto A. Abad to replace Associate Justice Presbitero J. Velasco, Jr., who is on official leave.

[1] Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Fernanda Lampas-Peralta and Teresita Dy-Liacco Flores concurring; rollo, pp. 2-23.

[2] Penned by Judge Antonio C. Reyes; records (Crim. Case No. 23229-R), pp. 293-304.

[3] Records (Crim. Case No. 23227-R), p. 1.

[4] Records (Crim. Case No. 23229-R), p. 1.

[5] Records (Crim. Case No. 23228-R), p. 1.

[6] Records (Crim. Case No. 23229-R), p. 25.

[7] TSN, 23 November 2004, 4 April 2005, 5 April 2005, 26 April 2005, 30 May 2005, 1 June 2005, 13 September 2005 and 14 September 2005.

[8] Records (Crim. Case No. 23229-R), pp. 6-7.

- [9] Id. at 6-7.
- [10] Id. at 8.
- [11] Id. at 15.
- [12] Id. at 13.
- [13] Id. at 11.
- [14] Id. at 12.
- [15] Id. at 14.
- [16] Id. at 16.
- [17] Id. at 181.
- [18] Id. at 8.
- [19] Id. at 139.
- [20] Id. at 18.
- [21] Id. at 45 and 237.
- [22] Id. at 10.
- [23] TSN, 15 and 16 November 2005.
- [24] TSN, 30 November 2005.
- [25] Records (Crim. Case No. 23229-R), p. 193.
- [26] CA rollo, p. 146.
- [27] Id. at 51-69.
- [28] Rollo, pp. 35-39.
- [29] CA rollo, p. 61.
- [30] *People v. Naquita*, G.R. No. 180511, 28 July 2008, 560 SCRA 430, 449; *People v. Del Monte*, G.R. No. 179940, 23 April 2008, 552 SCRA 627, 637-638; *People v. Santiago*, G.R. No. 175326, 28 November 2007, 539 SCRA 198, 212.
- [31] TSN, 5 April 2005.
- [32] TSN, 5 April 2005, pp. 13-28.
- [33] *People v. Naquita*, supra note 30; *People v. Del Monte*, supra note 30; *People v. Santiago*, supra note 30.
- [34] TSN, 5 April 2005, pp. 22-24.
- [35] *People v. Naquita*, supra note 30 at 444; *People v. Santiago*, supra note 30 at 217; *People v. Concepcion*, G.R. No. 178876, 27 June 2008, 556 SCRA, 421, 440.
- [36] Id.
- [37] Records (Crim. Case No. 23229-R), p. 193.

[38] *People v. Soriano*, G.R. No. 173795, 3 April 2007, 520 SCRA 458, 468-469; *People v. Nicolas*, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 204; *People v. Villanueva*, G.R. No. 172116, 30 October 2006, 506 SCRA 280, 288.

[39] *People v. Quillosa*, G.R. No. 115687, 17 February 2000, 325 SCRA 747, 754-755.

[40] *People v. Suarez*, G.R. No. 153573-76, 15 April 2005, 456 SCRA 333, 349; *People v. Cortez*, G.R. No. 131924, 26 December 2000, 348 SCRA 663, 669; *People v. San Pascual*, G.R. No. 137746, 15 October 2002, 391 SCRA 49, 63; *People v. Legaspi*, G.R. No. 117802, 27 April 2000, 331 SCRA 95, 114.

[41] CA rollo, pp. 63-68.

[42] *People v. Santiago*. *supra* note 30.

[43] *Id.*

[44] *People v. Naquita*; *supra* note 30; *People v. Santiago*, *supra* note 30.

[45] *People v. Boco*, 368 Phil. 341, 367 (1999).

[46] TSN, 5 April 2005, p. 14-15.

[47] *Id.* at 15.

[48] CA rollo, pp. 51-60.

[49] G.R. No. 171019, 23 February 2007, 516 SCRA 621, 633-634.

[50] *People v. Agulay*, G.R. No. 181747, 26, 566 SCRA 571-595; *People v. Naquita*, *supra* note 30; *People v. Concepcion*, *supra* note 35; *People v. Del Monte*, *supra* note 30.

[51] *Id.*

[52] *Id.*

[53] Records (Crim. Case No. 23229-R), p. 62.

[54] *People v. Hernandez*, G.R. No. 184804, 18 June 2009.

[55] G.R. No. 145348, 14 June 2004, 432 SCRA 25, 32.

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