

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. OSCAR D. FABIAN, ACCUSED-APPELLANT.

G.R. No. 83329. December 10, 1991

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-83329/>

FELICIANO, J.:

Oscar Fabian was charged with selling and delivering methylamphetamine crystals, commonly called "shabu," a regulated or prohibited drug.

After arraignment and trial, the court a quo rendered in due time, on 14 March 1988, a decision finding the accused guilty of violating Article III, Section 15 of Republic Act No. 6425, as amended, and sentencing him to life imprisonment and to pay a fine of P20,000.00.

Appellant ascribes the following errors to the trial court:

- "1. The lower court erred in admitting as evidence the alleged two (2) packets of shabu as the shabu supposedly seized from the accused when it was never authenticated.
2. The lower court erred in not ruling that the prosecution failed to prove the guilt of the accused.
3. The trial court erred in admitting as evidence Exhibit "B," when there is no proof that accused was advised of his constitutional right to refuse to sign said exhibit.
4. The lower court erred in not giving exculpatory weight to the evidence of the defense."[1]

The "shabu" was declared forfeited to the Government and ordered turned over to the Dangerous Drugs Board for proper disposal.

The evidence presented by the People tended to establish the following facts:

At around 2:00 p.m. on 11 March 1987, an unnamed informant reported to P/Pfc. Jose S. Basco of the 13th Narcotics Regional Unit, Narcotics Command, Camp Crame, that one Oscar Fabian alias "Boy Pena," was selling "shabu" in Barangay Pulang-Lupa, Las Piñas, Metro Manila. After evaluation of the information, a "buy-bust" operation team was organized, composed of P/Pfc. Basco as team leader, and P/Pfc. Lolita O. Bugarin and Patrolman Rolando Geronimo as members.

At about 4:30 p.m. of the same day, Pat. Geronimo acting as "poseur-buyer," together with the unnamed informant, met Oscar Fabian outside the latter's hide-out. After an exchange of pleasantries between Fabian and the informant, the latter introduced Patrolman Geronimo to the former as a "good buyer." Geronimo asked Fabian whether the latter had "shabu" to sell. Fabian answered in the affirmative and drew from his right front pants' pocket an aluminum foil packet[2] and tossed it to Geronimo. Geronimo ascertained that the contents of the aluminum foil packet were "shabu" and then gave the pre-arranged signal consisting of scratching his head with his right hand. The other team members who had been observing Patrolman Geronimo and appellant Fabian from a distance, closed in immediately and proceeded to search the person of appellant Fabian. The search yielded

another tin foil packet[3] from the same front pants' pocket of Fabian. P/Pfc. Basco looked at the contents of the packet and put it away.

P/Pfc. Basco apprised appellant Fabian of his constitutional rights and asked him to sign the on-the-spot receipt for the confiscated tin foil packets. Appellant was then brought to the 13[th] Narcotics Command Headquarters at Camp Crame where he was referred to Patrolman Wenceslao Leño Jr. for investigation.

At 12:45 a.m., 12 March 1987, Patrolman Leño took custody of the two (2) tin foil packets attached by tape to a sheet of bond paper,[4] the receipt for the confiscated items signed by appellant Fabian,[5] the joint affidavit of arrest signed by the arresting officers[6] and the person of appellant.[7] A request for chemical analysis of the substance found in the confiscated tin foil packets attached to the sheet of bond paper was sent in to the Philippine Constabulary Crime Laboratory at 9:00 o'clock a.m. of the same day.

During the investigation, Patrolman Leño asked appellant whether the signature appearing on the confiscation receipt was his. Appellant answered in the affirmative. Patrolman Leño then apprised him of his constitutional rights and asked him if he wished to exercise them. Appellant answered in the affirmative and henceforth remained silent.

Appellant presented a different version of the facts. He said that on 11 March 1987, as he was resting in his house after the day's work. Patrolman Geronimo came by and inquired whether he (Fabian) had noticed anyone running by his house. Fabian replied that he had not noticed anyone passing or running by his house; Patrolman Geronimo left and presumably continued his search elsewhere. Shortly however, and quite suddenly, Patrolman Geronimo with some companions showed up again at Fabian's house. They kicked in the door of the house. Inside, Patrolman Geronimo demanded that appellant Fabian produce the "shabu" the latter was hiding. Patrolman Geronimo's companions searched Fabian's house, destroying some of the walls in the process, but found nothing. Patrolman Geronimo and companion allegedly took a table clock and an "alkansiya" belonging to Fabian's wife, and arrested Fabian as well. Fabian was brought to Camp Crame with other persons who appeared to have been likewise arrested.

Fabian continued that at Camp Crame, Patrolman Geronimo asked him for P4,000.00 so that Fabian could be released with other persons who had already paid a similar amount. Because Fabian had no money to give, he was not released but was subsequently transferred to the Las Piñas Municipal Jail.[8]

Appellant, moreover, pointed to the report of Forensic Chemist Lina C. Sarmiento, which described the specimens submitted to her for chemical analysis in the following terms:

"Ex. A -- 28.9 milligrams of white crystals wrapped with aluminum foil and placed in a small transparent plastic bag.

Ex. B -- 2.1 milligrams of white crystals wrapped with aluminum foil and placed in a small transparent plastic bag." (Underscoring supplied)

Appellant's counsel adverted to the fact that in Exhibit "B", to which Exhibits "B-1" and "B-2" were attached and taped, described said Exhibits "B-1" and "B-2" as being "approximately 1/8 of a gram of suspected "shabu" each. Since 1/8 of a gram is equivalent to 125 milligrams, appellant suggests that the differences in the weights of tin foil packets which were examined by Forensic Chemist Sarmiento indicated that the original packets received or taken from appellant Fabian may well have been substituted with other aluminum foil packets by the time they had reached the PC Crime Laboratory.

The force of this suggestion is more apparent than real. The members of the police "buy-bust" team who went to Barangay Pulang-Lupa, Las Piñas, were obviously not equipped with scientific precision weighing instruments.

The description of the packets as constituting approximately 1/8 of a gram of suspected "shabu" was, in all probability, as pointed out by the Solicitor General, due to the fact -- well-known to the police officers -- that "shabu" is commonly sold in the streets in commercial packets of approximately 1/8 of a gram each. The arresting officers merely assumed that the packets derived from appellant Fabian were of "normal" commercial weight. The difference between 125 milligrams and 28.9 or 2.1 milligrams is too minute to be detectable by hand.

Appellant Fabian's principal argument relates to the alleged failure of the prosecution sufficiently to authenticate what appellant described as the "chain of custody" over the "shabu" allegedly seized from appellant. Fabian argues that the prosecution had failed to trace or account for the movement of the seized tin foil packets, obviously to cast doubt on whether the tin foil packets found to contain "shabu" were in fact the very same packets seized from appellant Fabian by the arresting officers. One of the packets was tossed by Fabian to Patrolman Geronimo while the other was taken by P/Pfc. Basco from the person of Fabian when the latter was searched on the scene. Both packets were held by P/Pfc. Basco who in turn delivered them to Patrolman Leaño at Camp Crame, as the investigating officer assigned to the case. Patrolman Leaño sent the tin foil packets later in the morning to the PC Crime Laboratory. The packets were handcarried by one Ignacio Larigado (referred to as a "courier" in the trial court's decision) and delivered to P/Capt. Lina C. Sarmiento, the Forensic Chemist who conducted a chemical analysis of the contents of the packets. Not all the persons through whose hands the tin foil packets actually or physically passed, were presented as witnesses before the trial court to authenticate the tin foil packets. Thus, appellant argues, the process of authentication was incomplete.

The Court is not persuaded. The circumstance that some of the persons through whose hands the seized items had passed were not presented as witnesses before the trial court, is not by itself sufficient to show that the contents of the packets had been switched, or that the packets which had been taken from appellant Fabian had been substituted with other packets containing "shabu." In the first place, all the persons who obtained and received the tin foil packets did so in the course of performance of official duties. The presumption that official duty was regularly performed was not overthrown by appellant's counsel. There was no showing that the original packets contained some substance other than "shabu" and that the original packets were switched for the packets actually delivered to and chemically examined by Police Chemist Lina Sarmiento. It is not indispensable that the prosecution allege and prove every single fact of the case.[9] Once the facts upon which is presumption established by law stands are shown, it is incumbent upon the adverse party to overthrow that presumption by sufficient and convincing evidence; a mere allegation is not evidence and is not adequate to dissolve the presumption.[10] In the instant case, the arresting officers are presumed to have regularly and faithfully performed their respective duties. There is nothing in the record to show that they changed the innocent contents of the tin foil packets originally taken from appellant Fabian with packets containing the prohibited drug "shabu." There is further no evidence on record tending to show that the testimonies of all the prosecution witnesses were pure fabrication. No sinister ulterior motives on the part of the arresting officers or any of the prosecution witnesses were shown by appellant.[11] Appellant asks us to draw all kinds of inferences from the fact that the original arresting officer did not personally hand-deliver the confiscated packets to the PC Crime Laboratory to avoid any possibility of tampering with or switching the packets and their contents with constituted evidence. But, as pointed out by the Solicitor General:

"There are proper procedures which apprehending officers must follow with regard to the criminals as well as to the disposition of the evidence seized in connection with their arrest. These procedures must be followed for the smooth administration of police functions. It would have been highly irregular for Geronimo to have personally brought the packets of "shabu" to the chemist and in the process, bypassing Leano, the investigating officer assigned to the case. Geronimo has no authority to directly submit items for testing." [12]

Appellant also assails the "buy-bust" operation as illegal because the "poseur-buyer" had not been given any

money for the purchase of the "shabu" and because the identity of the alleged informant was not revealed in court. Appellant contended further that it was "incredible" that appellant as a supposed drug pusher would sell "shabu" right in front of his own home.

The Court has several times stressed that the offense of illegal sale of a prohibited drug is committed once a sale transaction was consummated. The presence of actual monetary consideration is not indispensable for the existence of the offense. In *People v. de la Cruz*,^[13] the Court stated that when a police officer went through the motions of buying prohibited drugs and his offer to buy was accepted by the accused-seller, the crime was consummated by mere delivery of the drug purchased. The fact that no money was actually delivered by the pretended buyer to the accused-seller did not prevent the offense from being committed.^[14]

That the identity of the informant was not disclosed and the informant presented in court, does not fatally prejudice the People's case. The testimony of the unnamed informant would have been corroborative at best. The mounting of the "buy-bust" operation was sufficiently established by Pat. Geronimo who had personal knowledge thereof. The trial court found the testimony of Patrolman Geronimo convincing and quite adequate:

"x x x. By and large, the testimony of Pat. Rolando Geronimo, the poseur-buyer, was candid and straight forward. He categorically and positively declared it was accused who delivered to him the aluminum foil which turned out to contain approxi-mately [1/8] gram of shabu. Thereupon, accused was arrested by Basco and Bugarin. Found in his person was another aluminum foil likewise containing shabu. Geronimo's graphic narration of how this event came about is logical and reasonable. x x x."^[15] (Underscoring added)

Moreover, we are unable to accord substantial weight to appellant's argument that it was "incredible" and "ridiculous" for a drug pusher to sell "shabu" in front of his house and to a stranger. The Court has noted many times in the past that retail drug pushers sell their prohibited wares to customers, be they strangers or not, in private as well as in public places.^[16] In fact, carrying out such sales in public tends to dissimulate the criminal nature of the transaction.

Appellant also pointed to supposed inconsistencies in the testimonies of the prosecution witnesses. Those inconsistencies, if that is what they were, were however minor and inconsequential in character, having been sufficiently explained during the trial and the explanations having been accepted by the trial court.^[17] The supposed inconsistencies did not in any case affect the credibility of the witnesses referred to. The applicable principle is that the assessments by the trial court of the credibility and sincerity of the various witnesses who testified before the court are accorded great respect by appellate courts.

Appellant finally assails the admission into the record of Exhibit "B," the on-the-spot receipt signed on 11 March 1987 by appellant at the time of his arrest. Appellant contends that Exhibit "B" should not have been admitted because there was no proof that he had signed said receipt after, rather than before, he was informed of his constitutional rights.

Exhibit "B" is not to be confused with Exhibit "E." While both Exhibits are confiscation receipts signed by the appellant, Exhibit "B" is a handwritten receipt which included the items seized from appellant. In contrast, Exhibit "E" is a printed form, which included a description (but not the actual items) of what had been seized from appellant. Exhibit "E" was in fact excluded by the court a quo during trial upon the ground that it was in the nature of an extrajudicial confession which had been given after an uncounseled waiver of appellant's constitutional rights. Appellant is trying similarly to exclude from the record Exhibit "B."

Exhibit "B" is a sheet of white bond paper on which the two (2) tin foil packets (Exhibits "B-1" and "B-2") seized from appellant were taped after each had been placed in a small bag of clear plastic. Exhibit "B" also contained the following statements handwritten in block letters:

"B' -- 11 March 1987

(1) approximate 1/8 of a gram of suspected 'shabu' w/c was delivered with intent to sell by (a) Boy Pena (Oscar Fabian y Divina) of Nr. 369 Pulang Lupa, Las Piñas, Metro Manila, on or about 11th March 87 'B-1'

(2) approximately 1/8 of a gram of suspected 'shabu' w/c was recovered from suspect's right front packet (maong pants) 'B-2'

Oscar D. Fabian (Signature)

OSCAR FABIAN Y DIVINA

Suspect

(Boy Pena)"[18]

We do not think above argument has any necessary impact on the conclusions reached by the trial court. Assuming (arguendo merely) that the descriptive statements found in Exhibit "B," when coupled with the signature of appellant Fabian, partake of the nature of an extrajudicial confession, those statements and signature may in any case be disregarded and excluded; those statements and signature are properly regarded as identification marks merely. Exhibit "B" is simply the paper mounting of the packets of "shabu" marked as Exhibits "B-1" and "B-2." What is important is that Exhibits "B-1" and "B-2" were in fact identified in the testimony of Patrolman Geronimo as having been received (in the case of Exhibit "B-1") from appellant Fabian and taken (in the case of Exhibit "B-2") from Fabian's right front 'pants' pocket on 11 March 1987.[19]

WHEREFORE, for all the foregoing, the Decision of the Regional Trial Court of Makati, Branch 133, Metropolitan Manila, in Criminal Case No. 29748 dated 14 March 1988 is hereby AFFIRMED. No pronouncement as to cost.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Appellant's Brief p. 1-2.

[2] Exhibit "B-1," Folder of Exhibits.

[3] TSN, 25 September 1987, p. 14.

[4] Exhibit "B-2," Folder of Exhibits.

[5] Exhibit "E", Folder of Exhibits.

[6] Exhibit "F", Folder of Exhibits.

[7] TSN, 23 October 1987, p. 7.

[8] TSN, 7 December 1987, pp. 7-19.

[9] See *People v. Marasigan*, 51 Phil. 701 (1928).

[10] *People v. Macabenta*, 170 SCRA 298 (1989). See also *People v. Doctolero*, 193 SCRA 632 (1991); *People v. Castiller*, 188 SCRA 377 (1990).

[11] *People v. Doctolero*, *supra*.

[12] Appellee's Brief, p. 7.

[13] 191 SCRA 160 (1990).

[14] People v. de la Cruz, *supra*; People v. del Pilar, 188 SCRA 37 (1990).

[15] Regional Trial Court Decision, p. 4; Rollo, p. 76.

[16] People vs. Sanchez, 173 SCRA 305 (1989); People vs. Paco, 170 SCRA 681 (1989). See also People vs. Policarpio 158 SCRA 85 (1988).

[17] Regional Trial Court Decision, p. 6; Rollo, p. 78. Patrolman Leaño testified that he had made the "Request for Laboratory Examinations" (Exhibit "A," Folder of Exhibits) on 12 March 1987. The "Request" was, however, dated 11 March 1987.

[18] Exhibit "B," Folder of Exhibits.

[19] TSN, 25 September 1987, pp. 5-6, 13, 15 and 16.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.