

## PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. HILARIO MACASLING, JR. Y COLOCADO, ACCUSED-APPELLANT.

*G.R. No. 90342. May 27, 1993*

Ponente: FELICIANO, J.

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### FELICIANO, J.:

Hilario Macasling, Jr. appeals from the Decision of the Regional Trial Court which sentenced him to suffer life imprisonment, to pay a fine and costs of litigation.

Appellant Macasling was charged with violation of Republic Act ("R.A.") No. 6425, as amended, in an information which read as follows:

"The undersigned accuses Hilario Macasling, Jr. y Colocado for violation of Section 21(b) in relation to Section IV, Article II of Republic Act No. 6425, as amended by Batas Pambansa Blg. 179 (Sale, Administration, Delivery, Transportation & Distribution), committed as follows:

That on or about the 20th day of August 1988, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, not authorized by law, did then and there wilfully, unlawfully and feloniously sell, deliver, distribute, dispatch in transit or transport fifty (50) grams of shabu, knowing fully well that said shabu [is] a prohibited drug, in violation of the above-mentioned provision of law."[1]

Appellant entered a plea of not guilty at arraignment and the case proceeded to trial. After trial, on 18 August 1989, the trial court rendered a decision with the following dispositive portion:

"WHEREFORE, in view of all the foregoing, the Court finds the accused Hilario Macasling, Jr. guilty beyond reasonable doubt of transporting and/or attempting to deliver 50 grams of shabu in violation of Section 21(b), Article IV in relation to Section 15, Article III, in relation to No. 2(e), Section 2, Article I of Republic Act No. 6425, as amended, and hereby sentences him to life imprisonment and to pay the fine of Twenty Thousand (P20,000.00) Pesos, without subsidiary imprisonment in case of insolvency, and to pay the costs.

The 50 grams of shabu contained in the wrapped package marked Happy Days (Exh. H and series) being the subject of the crime, is hereby declared confiscated and forfeited In favor of the State and referred to the Dangerous Drugs Board for immediate destruction.

The accused Hilario Macasling, Jr. being a detention prisoner is entitled to be credited 4/5 of his preventive imprisonment in the service of his sentence under Article 29 of the Revised Penal Code.

So Ordered."[2]

The evidence of record discloses that on 19 August 1988, at about 3:00 o'clock in the afternoon, Lt. Manuel Obrera, Chief of the Narcotics and Intelligence Division, Integrated National Police ("INP"), Baguio City, received a telephone call from the Chief of the Narcotics Command ("Narcom"), First Regional Unit, INP. The latter sought the assistance of Lt. Obrera in the apprehension of appellant who, according to the Narcom Chief, would be delivering shabu at Room No. 77 of the Hyatt Terraces Hotel in Baguio City, on that same afternoon. Lt.

Obrera quickly formed a team which include Pat. Ramoncito Bueno, Pat. Martel Nillo and himself and hastily left for the hotel. There they were met by the Narcom Chief who informed them that appellant Macasling had previously agreed with a Chinese businessman in Las Piñas, Metro Manila, that appellant would deliver about 250 grams of shabu at Room No. 77 of the Hyatt Terraces Hotel.

Accordingly, Lt. Obrera and his companions waited inside Room No. 77 of the hotel, for appellant to show up. Appellant, however, did not arrive that afternoon. Instead, he arrived at the Hyatt Terraces Hotel at about 1:00 o'clock in the early morning of the following day, together with one Editha Gagarin and a third person who was an undercover Narcom agent. Lt. Obrera opened the door of Room No. 77 to let appellant and his party in, upon noticing that the Narcom agent was combing his hair, which was a pre-arranged signal meaning that appellant had the shabu in his possession. When appellant and his party were inside Room No. 77, Lt. Obrera and his companions identified themselves to appellant and asked him about the shabu. Appellant handed over a small package with a wrapper marked "Happy Days" which, upon being opened by the arresting officers, was found to contain about 50 grams of crystalline granules.[3] Appellant and Editha Gagarin were brought to Camp Bado, Dangwa, La Trinidad, Benguet, where the fact of their arrest was officially recorded. They were later transferred to the Baguio City Jail as detention prisoners. The crystalline granules were forwarded to the INP Crime Laboratory in Camp Crame, Quezon City, for examination. The Forensic Chemist in charge of the examination subjected the granules to four (4) different tests, namely, the color test, the melting point test, the thin layer chromatography test, and the spectro-infra red test. All the tests showed the presence of metamphetamine hydrochloride, the scientific name of the substance popularly called shabu.[4]

The investigation conducted by the City Prosecutor of Baguio City initially included Editha Gagarin. However, upon the basis of a letter written by appellant Macasling admitting sole responsibility for the acts charged in the information, Editha was excluded from the information. In that letter, appellant stated that Editha was completely innocent, and that she had merely come along with appellant, at his invitation, to Baguio City.

Appellant Macasling made the following assignment of errors in his Brief:

1. The lower court erred in not holding that since the arresting officers were not armed with a search warrant nor a warrant of arrest, the arrest and consequent confiscation of the package with a wrapper marked 'Happy Days' contain[ing] 50 grams of shabu (Exh. H and series) are illegal and unlawful, hence are inadmissible in evidence.
2. The lower court erred in not acquitting the accused on the ground that 'shabu' is not one of those mentioned in R.A. No. 6425, as amended.
3. The lower court erred in not acquitting the accused on the ground that he was deprived of his constitutional right to be informed of the nature and the cause of the accusation against him.[5]

We shall consider the above alleged errors though not in the order submitted by appellant.

We consider first appellant's argument that he cannot be convicted of the offense charged in the information considering that shabu -- the term used in the information -- is not a dangerous drug, since it is not one of those enumerated as such in R.A. No. 6425 (The Dangerous Drugs Act).

R.A. No. 6425, as amended, distinguishes between "prohibited drugs" and "regulated drugs." Article I, Section 2 (e) defines the term "dangerous drugs" as referring either to "prohibited drugs" or to "regulated drugs" in the following manner:

"(e) 'Dangerous Drugs' -- refers to either:

- (1) 'Prohibited drug,' which includes opium and its active components and derivatives, such as heroin and

morphine; coca leaf and its derivatives; principally cocaine; alpha and beta eucaine, hallucinogenic drugs, such as mescaline, lysergic acid diethylamide (LSD) and other substances producing similar effects; Indian hemp and its derivatives; all preparations made from any of the foregoing; and other drugs and chemical preparations, whether natural or synthetic, with the physiological effects of a narcotic or a hallucinogenic drug; or (As amended by B.P. Blg. 179, March 12, 1982.)

(2) 'Regulated drug' which includes self-inducing sedatives, such as secobarbital, phenobarbital, pentobarbital, barbital, amobarbital and any other drug which contains a salt or a derivative of a salt of barbituric acid; and salt, isomer or salt of an isomer, of amphetamine, such as benzedrine or dexedrine, or any drug which produces a physiological action similar to amphetamine; and hypnotic drugs, such as methaqualone, nitrazepam or any other compound producing similar physiological effects (s amended by P.D. No. 1683, March 14, 1980.)

x x x x x x x x"

(Underscoring supplied)

The statute penalizes the sale, administration, delivery, distribution and transportation of both "prohibited drugs" and "regulated drugs:"

## "Article II

### Prohibited Drugs

x x x x x x x x

Sec. 4. Sale, Administration, Delivery, Distribution and Transportation of Prohibited Drugs. -- The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, administer, deliver, give away to another, distribute, dispatch in transit or transport any prohibited drug, or shall act as a broker in any of such transactions. If the victim of the offense is a minor, or should a prohibited drug involved in any offense under this Section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed. (As amended by P.D. No. 1675, February 17, 1980.)

x x x x x x x x

## Article III

### Regulated Drugs

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Sec. 15. Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs. -- The penalty of life imprisonment to death and a fine ranging from twenty thousand to thirty thousand pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or distribute any regulated drug. If the victim of the offense is a minor, or should a regulated drug involved in any offense under this section be the proximate cause of the death of a victim thereof, the maximum penalty herein provided shall be imposed. (As amended by P.D. No. 1683, March 14, 1980.)

x x x x x x x x"

(Underscoring supplied)

The trial court after noting the above-quoted provisions of the statute, went on to say that:

"From the above provisions of law, it is clear that shabu which is the street name of metamphetamine

hydrochloride, is not among those enumerated as prohibited drugs under No. 1(e), Section 2, Article I on Definition of Terms of Republic Act 6425, as amended.

Obviously, metamphetamine hydrochloride (shabu) is a derivative of amphetamine or a compound thereof, meaning to say, amphetamine in combination with other drugs or elements which, if one looks closer, is actually enumerated among the regulated drugs under No. 2(e), Section 2, Article I on Definition of Terms of Republic Act 6425, as amended.

Note that the law says when it defines regulated drugs as those 'which includes self inducing sedatives such as x x x of amphetamine such as benzedrine or dexedrine, or any other drug which produces a physiological action similar to amphetamine, and hypnotic drugs, such as methaqualone or any other compound producing similar physiological effects.' Since shabu is actually metamphetamine hydrochloride, it would then be obvious that its component parts would be the compound of amphetamine with other elements to form metamphetamine hydrochloride. In other words, among the elements contained in metamphetamine hydrochloride is amphetamine, a regulated drug.

x x x x x x x x"[6]

(Underscoring supplied)

We agree with the above ruling of the trial court. This Court has in fact taken judicial notice that shabu is a "street name" for metamphetamine hydrochloride (or "methyl amphetamine hydrochloride").[7] Considering the chemical composition of shabu, the Court has declared that shabu is a derivative of a regulated drug,[8] the possession, sale, transportation, etc. of which is subject to the provisions of R.A. No. 6425 as amended. It remains only to point out that, in the case at bar, the laboratory examination conducted on the crystalline granules recovered from appellant in fact yielded the compound metamphetamine hydrochloride. The use in the criminal information of the casual or vulgar term shabu rather than the scientific term metamphetamine hydrochloride, does not affect the legal responsibility of appellant under the relevant provisions of R.A. No. 6425 as amended.

It is true, as pointed out by the trial court, that the preambular portion of the criminal information in this case referred to violation of "Section 21 (b) in relation to Section 4, Article II of R.A. No. 6425 as amended by Batas Pambansa Blg. 179." Section 21 (b) of the statute reads as follows:

"Sec. 21. Attempt and Conspiracy. -- The same penalty prescribed by this Act for the commission of the offense shall be imposed in case of any attempt or conspiracy to commit the same in the following cases:

x x x x x x x x

(b) Sale, administration, delivery, distribution and transportation of dangerous drugs;

x x x x x x x x"

(Underscoring supplied)

Section 4, Article II of the statute deals with "sale, administration, distribution and transportation of prohibited drugs." Upon the other hand, Section 15 of the statute is concerned with the "sale, administration, dispensation, delivery, transportation and distribution of regulated drugs." It will be recalled that the term "dangerous drugs" as used in the statute covers both "prohibited drugs" and "regulated drugs." Thus, again as pointed out by the trial court, the opening clause of the criminal information should, more precisely, have referred to Section 15 which deals with "regulated drugs" rather than to Section 4 which refers to "prohibited drugs." This imprecision in the specification of the appropriate section of R.A. No. 6425 as amended has, however, no consequences in the case at bar. For it is the character of the acts charged in the criminal information and proven at the trial that is important, rather than the correctness of the designation of the section and article of the statute violated. It should

also not escape notice that the penalty provided in Section 4: "life imprisonment to death and a fine ranging from P20,000.00 to P30,000.00," is exactly the same penalty imposed in Section 15 of the statute.

In much the same way, appellant's contention that he had been deprived of his right to be informed of the nature and cause of the accusation against him, is bereft of merit. The acts with which he was charged are quite plainly set out in the operative portion of the criminal information: that appellant "did --- willfully, unlawfully and feloniously sell, deliver, distribute, dispatch in transit or transport 50 grams of shabu, knowing fully well that said shabu [is] a prohibited drug x x x". We agree with the trial court that the use of the term "prohibited drug" was merely a conclusion of law, something which is for the Court to determine; in the circumstances of this case, the inaccurate use of the term "prohibited drug" was also merely a falsa descriptio. The trial court said:

"The Court stressed this point as in the body of the Information what is alleged as the offense committed is that the accused unlawfully and feloniously sell, deliver, distribute, dispatch in transit or transport 50 grams of shabu knowing fully well that said shabu is a prohibited drug in violation of the law.

It can readily be seen that the subject matter of the offense, as recited in the body of the Information, is the transport or sale or delivery of the 50 grams of shabu. This is the allegation of fact in respect to the acts constituting the offense. This is the offense that would need to be proved. However, the allegation that shabu is a prohibited drug is a conclusion of law. Apparently, the prosecutor who filed the Information considered shabu a prohibited drug. Thus, the prosecutor designated the offense as a violation of Section 21 (b) in relation to Section 4, Article II of Republic Act No. 6425, as amended. The Court pointed this out as should shabu, which really is the street name of metamphetamine hydrochloride be, in fact, a regulated drug, then the designation of the offense should have been Violation of Section 21(b), Article IV in relation to Section 15, Article III of Republic Act 6425, as amended. But note, despite the mistaken designation of the offense there would not be a change in the offense charged for as recited in the body of the Information, what is charged is still the sale, transport or delivery of 50 grams of shabu. That is the one important. Only the designation of the offense was a mistake from regulated drug to prohibited drug which is a conclusion of law.

This would not violate the constitutional right of the accused to be informed of the nature and cause of the accusation against him. As in fact, the accused is still informed of the offense charged, that is, the unlawful transport, sale or delivery of 50 grams of shabu.

x x x x x x x x"[9]

(Underscoring partly in the original and partly supplied)

Appellant's next contention is that because he was not lawfully arrested, the package with a "Happy Days" wrapper containing 50 grams of shabu, taken from him was inadmissible in evidence. Appellant's claim that he was unlawfully arrested is anchored on the fact that the arresting officers had neither warrant of arrest nor a search warrant.

The basic difficulty with appellant's contention is that it totally disregards the antecedents of the arrest of appellant inside Room No. 77 of the Hyatt Terraces Hotel. It will be recalled that the arresting officers had been informed by the Chief of the Narcom Regional Office that a transaction had been agreed upon by appellant in Las Piñas, Metro Manila, involving delivery of shabu, which delivery was, however, to take place in Room No. 77 at the Hyatt Terraces Hotel in Baguio City. Only appellant with Editha Gagarin and the undercover Narcom agent showed up at Room No. 77 at the Hyatt Terraces Hotel and the Narcom undercover agent had signalled that appellant had with him the shabu. The reception prepared by the arresting officers for appellant inside Room No. 77 was in fact an entrapment operation. The sale of the shabu (understood as the meeting of the minds of seller and buyer) did not, of course, take place in the presence of the arresting officers. The delivery or attempted delivery of the subject matter did, however, take place in their presence. The trial court explained:

"The situation at hand is no different from a buy bust operation and is in fact part of a buy bust operation. It must be stressed that the sale was transacted and closed in Las Pinas, Metro Manila by a Chinese businessman but the delivery was directed to be made in Room 77, Hyatt Terraces, Baguio. And instead of the Chinese businessman being inside Room 77 to receive the delivery, the Narcom elements took his place to entrap the party that will deliver.

Normally, the buy bust operation may take the form of both the negotiation for the sale and delivery being made in the same place between the seller and the poseur buyer. And when the sale is agreed upon, on the same occasion the drug is delivered upon the payment being given. And it is at this juncture that the police or the Narcom elements close in to arrest the offender in the act of selling and delivering. This is the classic case of a 'buy-bust' operation, to bust drug pushing.

But surely, there are variations of a 'buy-bust' operation, where the sale is agreed upon in one place like on the street and then the delivery is to be made in another place as when the buyer and the seller proceed to the house where the drug is stored for the delivery. And upon the delivery of the drug by the seller to the buyer, the police elements will arrest the seller in the act of delivering.

And in the case at bar, the situation is but an extension of the second variation above illustrated where the sale is agreed upon in one place but the delivery is to be made in another place. As here the sale was agreed upon in Las Pinas but the delivery was to be made in a far away place, in Hyatt Terraces, Baguio City. Surely, the above is still part and parcel of a buy bust operation although as we said it is more a 'bust the delivery' operation.

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The fact that the Narcom got to know beforehand the delivery to be made thru their intelligence sources must be given credence by the Court. Like any other organization fighting the crime on drugs, the Narcom must have intelligence sources or it cannot perform its functions well and fulfill its mission.

Thus, to wait for the delivery, the Narcom elements deployed themselves inside Room 77 in place of the Chinese businessman to entrap the party who will appear to deliver the shabu which they will know would be in his possession thru a pre-arranged signal of their undercover agent. Whosoever comes and appears in Room 77 would be it. All other persons are unexpected (sic) to come to Room 77 and have no business appearing there except to deliver the shabu unless explained. And ultimately their waiting paid off as accused Hilario Macasling, Jr. appeared in Room 77 to deliver the shabu and from whom it was taken by the Narcom. The lack of warrant of arrest is not fatal as this would be covered by the situation provided for warrantless arrests under Section 5, Rule 113 of the Rules of Court where an offender is arrested while actually committing an offense or attempting to commit the offense in the presence of a peace officer.

x x x x x x x x

The Court must stress that the situation in the case at bar is very different from a situation where the law enforcing agents or elements will simply accost people at random on the road, street, boat, plane or bus without any pre-arranged transaction and without warrant of arrest or search warrant and by chance find drugs in the possession of a passerby. This latter situation is clearly not permissible and would be in violation of the constitutional rights of a person against unreasonable searches and seizures. This would be a fishing expedition. You search first, and if you find anything unlawful you arrest.

But here it is not at random. There was a previous unlawful transaction. There is a designated place for delivery, Room 77 and a specified time frame, that very day of August 19, 1988 or thereabouts, and limited to a particular person, in the sense that whoever would appear thereat would be it. Those who don't knock at Room 77 and don't go inside Room 77 will not certainly be arrested. But those who will be there at that time and in that place will surely be arrested because of the advance information, thru the intelligence sources, on the

delivery and the prior transaction made. This makes a lot of difference.

x x x x x x x x

But in the case at bar, accused Hilario Macasling, Jr., at the time of his arrest, was actually in the act of committing a crime or attempting to commit a crime in the presence of the peace officers as he appeared there in Room 77 to deliver 50 grams of shabu, a regulated drug, which was previously bought but directed to be delivered thereat.

The accused had no reason to be at Room 77, knocking therein, and going inside, if he was not the party to deliver the shabu, and indeed he was. And the Narcom elements have the right to pounce on him immediately lest he gets away, or is tipped off, or can sense something is amiss or wrong. Unless, of course, accused can explain then and there that he knocked on the door and went inside Room 77 by mistake like being an innocent hotel boy, room boy or hotel employee who is going inside the room to fix the room. Or that accused is a hotel guest who committed a mistake as to his correct room. But this is not the situation at hand as no such explanation was immediately made by the accused. On the contrary, accused went inside the room when let in indicating beyond reasonable doubt that he was the party to deliver, and indeed he was, as the shabu was taken from his person after the pre-arranged signal was given by the undercover agent. These circumstances speak for themselves. *Res Ipsa Loquitur*. The accused was caught in *flagrante delicto*.

x x x x x x x x"[10]

(Underscoring supplied)

We consider that under the total circumstances of this case, the warrantless arrest of appellant inside Room No. 77 was merely the culmination of an entrapment operation and that the taking of shabu from appellant was either done immediately before, or was an incident of, a lawful arrest.[11]

As his principal factual defense, appellant denied knowledge of the fact that the package bearing the "Happy Days" wrapper contained a quantity of a dangerous drug, claiming that he had merely been instructed by his employer, Mr. Ben Diqueros, to bring the package to Baguio City as a gift for Mrs. Diqueros. Appellant sought to explain his trip to Baguio by insisting that he had been asked by Mr. Diqueros to drive the latter's Toyota Celica car to the Diqueros residence in Tranco Ville, Baguio City, as Mrs. Diqueros was planning to sell the car. Macasling had in turn invited Editha Gagarin, together with the latter's children and mother, to join him in Baguio City. They reached Baguio City later in the evening of 19 August 1988 and stayed temporarily at the Castilla Monte. Appellant contended that he had left the Castilla Monte to see Mrs. Diqueros at their residence in Tranco Ville but was there informed by one Mario and a domestic helper that Mrs. Diqueros was at the Hyatt Terraces Hotel. Appellant then had Mario accompany him to the hotel where they found Mrs. Diqueros playing in the casino. Appellant, however, decided not to bother Mrs. Diqueros and so returned to the Castilla Monte.

While at the Castilla Monte, appellant continued, he received a telephone call from Mario informing him that Mrs. Diqueros had finished playing at the casino. Although it was then midnight, appellant together with Editha Gagarin proceeded to the Hyatt Terraces Hotel. There they were met at the hotel lobby by Mario who informed them that Mr. Diqueros was at Room No. 77. Appellant claimed that he was, in Room No. 77, searched at gunpoint and that the package he was carrying for Mrs. Diqueros was seized. Unknown to him, he insisted, the gift package contained "shabu." [12]

The trial court was not persuaded by appellant's elaborate disclaimer of knowledge about the shabu, finding such disclaimer as contrived and improbable and not worthy of credence.[13] The rule, of course, is that testimony to be believed must not only originate from a credible witness, but must also itself be credible.[14] We see no reason, and we have been pointed to none, why the Court should overturn the appraisal of the trial court of the

credibility (or rather lack of credibility) of the long story offered by appellant. We find no basis for departing from the basic rule that the appraisal by the trial court of the credibility of witnesses who appeared before it is entitled to great respect from appellate courts who do not deal with live witnesses but only with the cold pages of a written record.

WHEREFORE, the Decision of the Regional Trial Court Baguio City, in Criminal Case No. 5936-R is hereby AFFIRMED in toto. No pronouncement as to costs.

**SO ORDERED.**

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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[1] Record, p. 1.

[2] Trial Court Decision, pp. 14-15; Record, pp. 78-79.

[3] TSN, 4 January 1989, pp. 2-17; TSN, 5 January 1989, pp. 19-41.

[4] TSN, 8 February 1989, pp. 43-51; Chemistry Report, dated 21 August 1988.

[5] Appellant's Brief, p. 1; Rollo, p. 42.

[6] Trial Court Decision, pp. 13-14; Rollo, pp. 27-28.

[7] See, e.g., *People v. Angeles*, 209 SCRA 801 (1992); *People v. Del Mar*, 210 SCRA 448 (1992); *People v. Buendia*, 210 SCRA 531 (1992).

[8] *Id.*

[9] Trial Court Decision, pp. 10-11; Rollo, pp. 24-25.

[10] Trial Court Decision, pp. 5-8; Rollo, pp. 19-22.

[11] See *People v. Malmstedt*, 198 SCRA 401 (1991); *People v. Asio*, 177 SCRA 250 (1989); *People v. Lo Ho Wing*, 193 SCRA 122 (1991); *Manipon v. Sandiganbayan*, 143 SCRA 267 (1986).

[12] TSN, 8 March 1989, pp. 2-8.

[13] Trial Court's Decision, Rollo, pp. 23-24.

[14] E.g., *People v. Maspil*, 188 SCRA 751 (1990); *People v. Aldana*, 175 SCRA 635 (1989); *People v. Maribang*, 149 SCRA 292 (1987).

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