

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. TERESITA DEL MAR ALIAS “TATA” ALIAS “EULANIE” AND EDISON SANCHEZ Y SULLIVAN, ACCUSED-APPELLANTS.

G.R. No. 95542. June 26, 1992

Ponente: PARAS, J.

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PARAS, J.:

This is an appeal interposed by accused Teresita del Mar alias "Tata" alias "Eulanie" and Edison Sanchez y Sullivan from the decision* of the Regional Trial Court, Seventh Judicial Region, Cebu City, Branch 7 in Criminal Case No. CBU-16919, finding both accused guilty beyond reasonable doubt as principals for violation of the Dangerous Drugs Act of 1972 (RA 6425) and sentencing both accused to suffer the penalty of life imprisonment.

On October 30, 1989 the Assistant Fiscal of Cebu City filed an Information for Violation of Section 15, Article III in relation to Section 21, Article IV of Republic Act No. 6425 against Teresita del Mar alias "Tata" alias "Eulanie" and Edison Sanchez y Sullivan, committed as follows:

"That on or about the 27th day of October 1989 at about 2:45 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping each other, with deliberate intent, did then and there sell, deliver and give away a shabu powder more or less one (1) gram wrapped on a clear plastic containing METHYLAMPHETAMINE HCL, a regulated drug, without authority of law.

CONTRARY TO LAW." (Rollo, p. 1).

On arraignment, accused-appellants Teresita del Mar and Edison Sanchez assisted by their respective counsels pleaded not guilty to the Information (Records, p. 23).

The prosecution presented three (3) witnesses, to wit: Police Lieutenant Myrna Areola, Sgt. Alejandro Binan and Lieutenant Emmanuel Ughoc.

Myrna Areola, a forensic analyst working at the PC Crime Laboratory Services at Gorordo Avenue, Cebu City testified that she examined certain specimens in connection with this case on the basis of a letter-request dated October 27, 1989 received from 1st Lt. Emmanuel Ughoc of the PC/INP Narcotics Command 7th Narcotics Regional Unit (Records, p. 50; Exhibit "A"). She subjected the specimen consisting of a plastic bag of crystalline powder to a chemical analysis (TSN, pp. 3-4, Hearing of January 1, 1990). The result of the examination as shown in the Chemistry Report No. C-363A-89 dated October 28, 1989 indicated the following findings:

"Chemical analysis conducted on the above-mentioned specimen gave positive results for METHYLAMPHETAMINE, a Regulated drug, on EXHIBIT `A'" (Records, p. 51; Exhibit "C").

Alejandro Binan, a PC soldier assigned to the 7th Narcotics Regional Unit stationed at Camp Lapulapu, Lahug, Cebu City since 1978, testified that on October 26, 1989 in the afternoon of that very day, they were conducting a

surveillance at Sundowners Hotel on the basis of an information received by their Commanding Officer Major Hassan that a certain Tata @ Melody and later on identified as Teresita del Mar was engaged in selling prohibited drugs called methylamphetamine hydrochloride commonly known as shabu powder at Sundowners Hotel. As a result of their surveillance, they concluded that she was engaged in the illegal business because they found out and observed different faces of young persons, mostly teenagers, visiting Room 526 where Teresita del Mar was billeted. After concluding that Teresita del Mar was engaged in the selling of prohibited drugs, they decided to conduct a buy-bust operation.

Before the buy-bust operation was conducted, he and Sgt. Muhamad Said were designated to act as poseur-buyers. They were supplied the amount of P1,200.00 in marked money to buy one (1) gram of shabu powder.

In the afternoon of October 27, 1989, they proceeded to Sundowners Hotel. He knocked at the door of Room 526. A person later identified as Edison Sanchez opened the door. They informed him that they wanted to buy shabu. Sanchez approached del Mar and the latter told Sanchez to let them in the room. When they were inside the room, del Mar asked their intention. They told her that they wanted to buy a gram of shabu powder. She asked for the money and Sgt. Said gave the P1,200.00 marked money to del Mar. Del Mar got a pack of white cellophane containing a gram of shabu and gave it to Sanchez who handed it to Sgt. Said.

After the selling of said prohibited drugs was consummated, they identified themselves as NARCOM agents and effected the arrest of Teresita del Mar and Edison Sanchez. After that he opened the door and gave a signal to their back-up. Thereafter their back-up, Lt. Ughoc, Sgt. Sevillaena and Sgt. Recta also went inside the room. According to him, they were able to recover a weighing scale, a weighing balance, aluminum foil, burner tubes and other paraphernalia found on top of the table inside Room 526. Other items recovered were a list of customers' telephone numbers, collectible amounts and also accused's own accountability with Sundowners Hotel.

He further testified that he had his initials written on the left side shoulder of the picture of Manuel Roxas in every P100.00 peso bills of marked money. That the marked money was recovered from the possession of Teresita del Mar placed inside a clutch bag. After the sale was consummated, they confronted Teresita del Mar with regard to the contents of the clutch bag. She voluntarily showed to them the clutch bag containing P36,000.00 together with the P1,200.00 in marked money (TSN, pp. 73-86, Hearing of January 9, 1990).

In the course of the direct examination, counsel for the defense submitted a continuing objection that the receipt or certification signed by Lt. Ughoc merely stated the articles seized as: (a) P36,000.00 Philippine Currency and (b) assorted shabu paraphernalia. In other words, the receipt for the articles seized was not properly detailed (Ibid., pp. 79-80).

Emmanuel Ughoc, also of the 7th Narcotics Command, corroborated the testimony of Sgt. Alejandro Binan. He testified that the buy-bust operation was conducted on October 27, 1989 at around 2:45 in the afternoon. Sgt. Recla, Sgt. Sevillaena and himself acted as back-up while Sgt. Binan and Sgt. Said acted as poseur-buyers. The poseur-buyers went ahead to Room 526 while he, together with his back-up, posted themselves near the vicinity. Five minutes later, more or less, Sgt. Binan opened the door of the room and told him to join them. He, together with his back-up, entered the room. When they entered, the accused Teresita del Mar and Edison Sanchez were already under arrest and since he saw some evidence placed on the table, he instructed his men to seize the items so as to have corroborative evidence that the accused is really engaged in the illegal sale of shabu. They also confiscated the amount of P36,000.00 because they believed that these were the proceeds of the crime.

The purchased shabu was in the possession of Sgt. Said who in turn gave it to him and was indorsed to the PC Crime Laboratory for laboratory examination. The certification does not mention the shabu because it was already

in the possession of Sgt. Said and was not included with the items confiscated from Teresita del Mar. The certification was signed by accused Teresita del Mar. He further testified that the serial numbers of the marked hundred peso bills were listed in the diary of Major Hassan (TSN, pp.3-14, Hearing of February 22, 1990).

On cross examination, he testified that he did not include the one (1) gram of shabu in the certification because it was already in the possession of Sgt. Said. Likewise the marked money was not also included in the list of confiscated items because the marked money is their property (TSN, pp. 1-10, Hearing of March 13, 1990).

On the other hand, the vision of the defense is as follows:

Teresita del Mar alias "Tata", denied knowing about shabu, much less selling it. She averred that she finished only first year high school. She started working as a dancer or entertainer when she was 18 years old. Aside from Manila she also worked as a dancer in Hongkong for two months in 1986. She stayed at a San Juan apartment when she was a dancer in Manila. All her expenses were defrayed by her boyfriends.

On October 19, 1989, she checked in at Sundowners Hotel in Cebu City upon receipt of a long distance call from her boyfriend that he would be arriving in Cebu. She and her boyfriend stayed there for four (4) days. In the afternoon of October 27, 1989, she met Edison Sanchez, her co-accused and whom she knew since childhood because they were neighbors in Mandaue City. She requested him to go to her hotel because she wanted him to bring a certain amount of money to her father. Upon arrival she told him to sit down while she got her clutch bag. While counting the P5,000.00 she intended to give to her father at the receiving room of Room 526, there was a knock at the door. Edison Sanchez peeped thru the "judas hole" upon her request and saw no one. She continued counting the money. The same thing happened the second time she heard a knock. As requested by her, Sanchez opened the door and here were two persons whom she did not know but identified as Sgt. Binan and Sgt. Said. Although she was scared because she thought that they were robbers, she allowed them to enter, having been/informed that they just wanted to ask some questions. Once inside the room, Sgt. Binan and Sgt. Said asked her whether she had any shabu for sale. She answered in the negative. She informed them further that she knew nothing about shabu.

She noticed Sgt. Binan was wearing a white t-shirt and saw that there was something placed inside his waist so she suspected him to be a policeman. She did not notice any suspicious bulky thing on the body of Sgt. Said.

After telling them that she has no shabu, Sgt. Binan and Sgt. Said left. Thirty (30) minutes later, after she handed the money to her co-accused Sanchez, and has given him the instructions on how to deliver the money to her father, there was again a knock at the door. Sanchez opened it but no one was there. He closed the door. She continued conversing with Sanchez. After the conversation, Sanchez went out of the room but was held back by Sgt. Binan and Sgt. Said.

Sgt. Binan made them sit down while Lt. Ughoc and the rest of their companions subjected her room to an intensive search. Moments later, one of the operatives opened the refrigerator and said that he found shabu there.

She declared that the only things confiscated from her room were the amount of P36,000.00 and the weighing scale. After that, she, together with Sanchez were brought to the NARCOM Headquarters in Lahug where they were interrogated by Sgt. Binan. She was not assisted by counsel during the interrogation. At 5:00 o'clock in the afternoon, they were brought back to the hotel by Sgt. Binan, Sgt. Said, Lt. Ughoc, Major Hassan and others whom she did not know. They were able to enter Room 526 because she did not leave the key downstairs. The NARCOM agents searched again her things. After that they showed her some things placed on top of the table she saw for the first time. She could not identify them but according to the NARCOM agents they were for the use of shabu. A picture was taken of her with the confiscated items among which are those in Exhibits "Q" to "W". She

denied having owned the lists of customers which according to her she also saw for the first time, only at the NARCOM office where she was interrogated. She did not know who had made the entries therein; neither were they in her handwriting. She likewise denied the allegation of the prosecution witness that she sold shabu to Sgt. Binan and that she was paid P1,200.00 for it. She, however, admitted having owned the clutch bag which contained P31,000.00 cash after deducting the P5,000.00 which she gave to her co-accused to deliver to her father. She further claimed that she signed the certification on October 30, 1989 at around 2:00 o'clock in the afternoon after they came from the office of the City Fiscal in a store somewhere at Ramos St., Cebu City, because she was made to believe by Lt. Emmanuel Ughoc that it was only a receipt for her money so she can claim it back. She does not know the owner of the store (TSN, pp. 3-20, Hearing of March 28, 1990; TSN, p. 2, Hearing of March 29, 1990).

She was forced to sign the certification because they told her that she has to sign that document to show that it was really her money so that she can get it back. (TSN, pp. 2-10, Hearing of March 29, 1990; TSN, pp. 2-23, Hearing of April 17, 1990).

Edison Sanchez, 24 years old, a driver and a resident of Mandaue City, corroborated in all material points the testimony of his co-accused Teresita del Mar. In addition, he stated that after being informed by Sgts. Binan and Said that it was a raid, they were made to sit down while the NARCOM agents searched the room. They informed them that they were able to find shabu but it was not shown to them. They also seized a weighing scale which he saw for the first time and which was left by a friend of Teresita del Mar. After that they were brought to Lahug (TSN, pp. 2-5, Hearing of May 7, 1990).

On cross examination, Edison Sanchez testified that the money given to him by Teresita del Mar was taken by Sgt. Binan even after he told Sgt. Binan that the money was for the father of Teresita. Sgt. Binan answered "Bahala na, for what purpose is that money?" He did not see the money anymore. Neither did he know where Sgt. Binan placed the money (TSN, pp. 5-9, Hearing of May 7, 1990).

In rebuttal, Sgt. Binan insisted that they entered Room 526 only once and that was when they conducted the buy-bust operation on October 27, 1989 at 2:45 o'clock in the afternoon and not twice as alleged by accused Teresita del Mar; that the shabu which they seized was actually handed to them as the subject of sale by Teresita del Mar through her co-accused Edison Sanchez in consideration of the marked money in the amount of P1,200.00 (TSN, pp. 2-6, Hearing of May 29, 1990).

Likewise, Lt. Emmanuel Ughoc testified that they entered Room 526 only after Sgt. Binan gave them the pre-arranged signal. He denied having found shabu inside the refrigerator but, the same was handed to him by Sgt. Said when they were already inside the room. He corroborated the testimony of Sgt. Binan that they seized the shabu paraphernalia right after they arrested the accused and not when they went back to Room 526 after coming from the headquarters. According to him, the accused together with all the seized articles which were found on top of the table including the lists of supposed customers were brought to the NARCOM Headquarters (TSN, pp. 2-4, Hearing of June 13, 1990).

On July 31, 1990, the trial court rendered judgment, the decretal portion of which reads as follows:

"WHEREFORE, premises above-set forth, the Court finds the accused, Teresita del Mar alias 'Tata' alias 'Eulanie' and Edison Sanchez y Sullivan, guilty beyond reasonable doubt, as principals, for violation of the Dangerous Drugs Act of 1972 (RA 6425), defined and punished in Sec. 15, Art. III of the said Act, and hereby sentences both accused to the penalty of Life Imprisonment, and each to pay a fine of P20,000.00, and to pay the costs.

The paraphernalia or instruments seized and confiscated marked as Exhibits 'Q' to 'W' are ordered confiscated

and forfeited in favor of the government and shall be turned over to the Dangerous Drugs Board, without delay. The gram of 'shabu' exhibit in the case is ordered destroyed, without delay, in accordance with Sec. 20, Art. IV of the same Act.

The amount of P36,000.00 seized from the accused not having been explicitly shown to be actually the proceeds of the acts complained of, is hereby ordered returned to said accused, Teresita del Mar. The amount of P1,200.00 marked money is ordered returned to the NARCOM, being the money used in their entrapment operation.

SO ORDERED." (Rollo, p.137; Decision, p. 37).

Both accused appealed.

Accused-appellant Teresita del Mar raised the following assignments of error, to wit:

I

The trial court erred in disregarding discrepancies in the evidence of the prosecution which created reasonable doubt as to the guilt of the herein appellant.

II

The trial court erred in finding that the prosecution was able to prove that the herein appellant sold shabu.

III

The trial court erred in holding that the guilt of the accused was proven by the prosecution beyond reasonable doubt.

IV

The trial court erred in convicting the accused. (p. 69, Rollo)

Likewise, accused-appellant Edison Sanchez averred that the prosecution failed to prove his guilt beyond reasonable doubt, which essentially is the main thrust of both appeals.

While it is well established that appellate courts will generally not disturb the factual findings of the trial court, considering that it is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and manner of testifying during the trial (*People v. Marzan*, G.R. No. L-63265, March 21, 1984), this does not apply in the case at bar where the lower court overlooked certain facts of substance and value that if considered, would affect the result of the case (*People v. Royeras*, 130 SCRA 265 [1984]).

This Court has taken judicial notice of the many reports of evidence being planted on unwary persons either for extorting money or exacting personal vengeance in anti-narcotics operations, where by their very nature, the need of entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grass of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, thus, the possibility of abuse is great. (*People v. Ale*, 145 SCRA 57 [1986]).

Not unlike in the case at bar, a careful analysis of the records shows certain inconsistencies and improbabilities that leave much to be desired in the prosecution's evidence.

Sgt. Binan testified that in the surveillance they conducted to confirm the veracity of the report that the accused was engaged in selling shabu, they allegedly posted themselves in a place where nobody could see them. In fact

they did not secure the permission of the management of the hotel because the operation was very confidential. However, he admitted that in order to see clearly people entering Room 526 of the accused in that hotel, they had to stand as close as 5 to 6 meters from the door. From that distance, it is obvious that they cannot fail to arouse apprehension of the people they are observing. Instead nobody appeared to have taken notice despite the supposedly on-going heavy traffic of drugs between the accused and the teenagers who kept coming and going to that room.

His testimony is as follows:

x x x x x x x x.

"Q - When you arrived in the 5th floor, after you went out of the elevator, where did you stay and where did you conduct the surveillance?

A - We posted in the 5th floor of the hotel where nobody could see us.

Q - In what particular place in the 5th floor?

A - Near the room of 526.

Q - Can you please draw a sketch and indicate to us the layout of the 5th floor from the place where you went out of the elevator and the room where Teresita del Mar was billeted, at Room 526?

A - (Witness preparing a sketch of the place where they posted near the room of the Sundowner Hotel No. 526). I could hardly recall because of the lapse of time.

x x x x x x x x.

Q - You will agree with me Sgt. Binan that in this sketch, there is a sort of an alley here going towards Room 526. Is it not?

A - Yes, sir.

Q - The end of the alley towards the other near Room 526, that's about 19 to 21 steps. Is it not?

A - I could not recall the distance.

Q - Of course, from the place you cannot observe who was entering Room 526 if you just stay in this alley here?

A - Yes, we can see.

Q - Are you sure of that?

A - Yes, sir.

Q - Showing to you a picture, this is the usual alley of Sundowner Hotel. Is it not?

A - I could see whether that is an alley of the hotel going towards the room of 526.

Q - But you are sure that if you stay at the entrance of the alley, you can see who are entering the room of 526?

A - We can see.

Q - My question was, if you stay in the alley without going towards Room 526, or very near Room 526, you cannot see anybody entering Room 526?

A - It could not be seen clearly.

Q - As a matter of fact, you can only see somebody going towards Room 526 if you really go near or about 1 or 2 steps away from Room 526. Is it not?

A - More than 5 steps, we could clearly see the persons entering the room.

Q - This Room 526, when it is open, the door is open, it is open towards the inside not the outside. Is it not?

A - Yes, towards inside.

x x x x x x x x.

Q - Now this alley was going towards Room 526. From the alley way, you cannot actually see Room 526. Is it not?

A - It could be seen clearly if it is more than 5 to 6 meters.

Q - In other words, before you can really observe somebody entering or going out of Room 526, you must stay about 5 to 6 meters from the door of that room before you can really observe what is going on, is it not?

A - Yes, sir."

(Cross examination: Hearing of February 15, 1990, TSN, pp. 4-8; Record, pp. 10?14).

Sgt. Binan also testified that when they conducted the surveillance, they observed actually different faces of young persons visiting Room 526. But on cross examination, although the hearing was only 3 or 4 months from such surveillance, he could not recall how many teenagers went in and out of the said room. He was so sure that the accused was peddling shabu to said teenagers but he did not even attempt to accost or arrest any of them if only to confirm his suspicions.

He testified as follows:

"Q - How many teenagers did you see going out or entering into the room of Room 526?

A - I could no longer recall how many of them but we observed that these were teen-agers going inside the room of Room 526.

Q - That was still sometime on October 1989, that was 3 or 4 months ago and I'm sure you are mentally alert. Would you say probably there were 2 or 3?

A - I cannot say the number of persons or teenagers going inside that room because we only observed many persons coming in and coming out but not that we were counting the number of persons going in and out of the room.

Q - You could not tell whether there were only two (2) who entered the room?

A - I could not recall how many of them going in and out.

Q - You could not even recall whether there were 4 or 5?

A - I cannot tell you exactly but I have observed that there were persons, young men going inside and outside.

Q - You could not even tell us if there was only one person who entered the room?

A - I cannot.

Q - You said that these people were teenagers. Why did you say that they were teenagers?

A - Because as what I have observed, they were more or less 18 years old.

x x x x x x x x.

Q - Now you said that because of the different teenagers going in and out of Room 526, you concluded that del Mar was peddling shabu to these teenagers. Is it not?

A - Yes, sir.

Q - Now possession of shabu is illegal. Is it not?

A - Yes, sir.

Q - So, did you not even as much as attempt to accost or try to arrest any of these teen-agers whom according to you were buying shabu from del Mar while you were conducting that surveillance?

A - I did not attempt to arrest those customers because our purpose in going there was to confirm the information as to whether Teresita del Mar was really selling shabu.

x x x x x x x x.

Q - Since you were really convinced that Teresita del Mar was selling shabu at Room 526 because according to you you saw different teenagers going in and out of Room 526. Did you not try to attempt to arrest del Mar right then and there?

A - After confirming the information that del Mar was really selling shabu, we conducted the buy-bust operation which resulted in the arrest of del Mar.

x x x x x x x x.

Q - And that confirmation came about only because you saw different teenagers going in and out of Room 526?

A - Yes, sir."

(Hearing of February 15, 1990; TSN, pp. 8--11, Record, pp. 14-17).

The foregoing testimony, which was full of inconsistencies and prevarications material to the offense, was made to support the prosecution's conjectures and conclusions, which lend credence to the categorical assertion of counsel for the defense that Sgt. Binan was lying and that no such surveillance was made. (Rollo, p. 80).

Sgt. Binan further testified that he and Sgt. Mohamad Said dressed as plainclothesmen with pistols under their shirts and looking hardly like the accused's regular customers of teenagers, were immediately admitted inside Room 526 when they said that they wanted to buy shabu without even checking their identities, their referrals and recommendations. Instead, the only gram of shabu supposed to be in the possession of Teresita del Mar stood ready for the taking of the NARCOM officers, not to mention an assortment of shabu paraphernalia allegedly placed on top of the table. The naivety if not stupidity of the situation, does not inspire belief.

Surely, the supposed drug pushing in the proportion described by the prosecution is not the drug pushing in a small scale contemplated by this Court in *People v. Paco*, G.R. No. 76983, 170 SCRA 682 [1989], which may be committed at anytime and at any place, in a public place or even in the presence of people. With all the more reason the improbability of the situation arrests attention, specially if one takes into consideration that the alleged selling of shabu was done by the "Shabu Queen" herself in one of the rooms of a plush hotel in downtown Cebu City. It is therefore reasonable to expect that the queen of shabu, the accused, would at least inquire who the prospective buyers were, or inquire who referred them to her, or who told them her room number, considering that they were perfect strangers. Additionally, she would have taken precautions to hide the shabu paraphernalia

supposedly on top of the table, before allowing entrance to her room of people who were not her regular customers.

The buy-bust operation was described by Sgt. Binan as follows:

"ATTY. REMOTIGUE:

Q - What were you wearing, a polo or t-shirt?

A - I was wearing a t-shirt at the time.

Q - Now, you said that on the day of the raid, you and Sgt. Mohamadshaid went towards the door of Room 526 and knocked on the door did you not?

A - Yes, sir.

x x x x x x x x.

Q - You said that you knocked on the door and without uttering any word, the door was immediately opened?

A - When I knocked on the door, a minute after, the door was opened by Edison Sanchez.

x x x x x x x x.

Q - Did you notice that Room 526 or of all the rooms of the Sundowner Hotel, has this (sic) a peep hole or judas hole wherein somebody inside the room can see somebody outside but that somebody outside cannot see somebody inside the room?

A - I did not notice.

Q - During your surveillance, you did not find it important whether somebody inside the room can see you from outside?

A - We did not see whether the persons inside could see us outside.

Q - You did not find it important to observe whether the rooms have these peep holes or judas holes in their doors?

A - We did not mind any more whether there are holes there.

Q - So let us go back to the time that you entered the room. According to you, Edison Sanchez opened the door. Who entered first, you or Sgt. Mohamad Said?

A - When Edison Sanchez opened the door, he asked what's our purpose.

Q - In other words, Edison Sanchez first opened the door and asked what you wanted?

A - Yes, sir.

x x x x x x x x.

Q - While you were still outside the room and Edison Sanchez asked you what do you want, what did you tell Edison Sanchez?

A - We informed him that we needed shabu.

Q - You told him that you wanted to buy shabu?

A - Yes, sir.

Q - By the way, how old is Sgt. Mohamad Said?

A - As if we are of the same age. (sic).

Q - We could say that both of you cannot qualify as being teenagers?

A - Yes, sir.

x x x x x x x x.

Q - When you said you wanted to buy shabu to (sic) Edison Sanchez, what did he say, did he say, come inside?

A - When Edison Sanchez knew that we wanted a shabu, he informed Teresita del Mar.

x x x x x x x x.

Q - When Edison Sanchez approached Teresita del Mar after you asked him that you will buy shabu, what did del Mar say?

A - We heard that Teresita del Mar told Sanchez to let us come inside.

Q - Despite the fact that del Mar did not know your identities, did not know your names, did not know if anybody recommended you to her, Teresita del Mar, the queen of shabu, immediately made you enter the room?

A - She instructed Edison Sanchez to let us enter inside the room.

x x x x x x x x.

Q - When you sat down inside the room of Room 526, both your firearms were tucked inside your waists and covered by your shirts?

A - Yes we concealed them in our waists.

Q - When you sat inside that room, what else transpired?

A - Teresita del Mar asked us how much we are going to buy.

Q - So that's all she said, she just immediately asked you how much you are going to buy?

A - Yes, because she was already informed by Edison.

Q - When you said you wanted to score, you mean you wanted to use shabu inside your room or just wanted to buy shabu and use it outside.

A - We wanted to buy shabu because we were pretending as users."

(Hearing of February 15,1990, TSN, pp. 13?15, Record, pp. 19-24).

In comparison, the version of both accused is easier to believe.

Teresita del Mar's testimony that she was counting the P5,000.00 to be given by Edison Sanchez, her co-accused, to her father when there was a knock on her door and her narration of her subsequent encounter with the NARCOM officers had all the earmarks of truth. Her reactions and those of the co-accused as described in her testimony were more in accord with human behavior in the ordinary course of human events. The immediate admittance of the NARCOM officers inside her room when they wanted to ask questions is the normal behavior of persons who had nothing to hide. In fact, despite rigid cross-examination, her testimony remained consistent and un rebutted. She insisted that she does not know shabu nor does she have any for sale. The fact that said

officers could not find any in her room despite intensive search, places in serious doubt the allegations of the latter that the only gram of shabu which is the subject of the crime in this case, was sold to them by Teresita del Mar.

Likewise, her declaration that the only things confiscated from her at the time of the raid were P36,000.00 and a weighing scale carries more weight than the certification issued by Lt. Ughoc, merely stating the articles seized as P36,000.00 Philippine currency and shabu paraphernalia which were not identified. No mention was made of the gram of shabu. The highly irregular issuance of certification or receipt was brought to the attention of the court by her defense counsel (Hearing of January 9, 1990, TSN, pp.7-8, Record, pp. 79-81) and confirmed by Lt. Ughoc himself when he was questioned by the court on the matter as follows:

"Q - Did you inventory the seized items soon after you had them confiscated?

A - Well, we did not identify individually but like for example shabu paraphernalia, we just placed it paraphernalia.

Q - This amount, this money consisting of P36,000.00 was this inventoried?

A - Yes, your Honor.

Q - How was it inventoried?

A - We have (sic) counted the numbers of denominations.

Q - Did you not have the proper listing of the serial numbers of every deal?

A - No, Your Honor.

Q - Identify it from the rest of the paper bills nos. listed were around?

A - The P36,000.00 Your Honor, we have not.

Q - You did not make a corresponding listing?

A - Yes Your Honor, only the marked money.

COURT:

Lt. Ughoc, you had been with the Narcom for quite sometime and for every items seized during such operation, you issued proper inventory. Is it not?

A - Yes, Your Honor.

Q - The Court wanted to know why did you not make proper inventory especially this amount listed the serial number thereof (sic)? After which the person from whom the same was seized may confirm by signing the same?

A - I have really issued a receipt to Teresita del Mar Your Honor, reflecting the amount of P36,000.00 and the seized shabu paraphernalias, and it was properly Signed by Teresita del Mar."

(Hearing of February 22, 1990, TSN, pp. 11--12; Records, pp. 100-101).

As to the other items supposedly included in the general term "assorted shabu paraphernalias" as appearing in the certification of items seized, Lt. Ughoc explained:

"Q - In this receipt, Lt. Ughoc, you listed in no. 2, assorted shabu paraphernalia and then you presented these. Are these among the alleged shabu paraphernalia that you mentioned?

A - Yes, sir.

Q - You will agree with me that this weighing scale can be used for other purposes too like weighing gold or any other articles?

A - Yes, I agree.

Q - This is also among the alleged shabu paraphernalia that you mentioned, is it not?

A - Yes, sir.

Q - You will also agree with me that mostly this is used for wrapping food for picnic or what?

A - Yes, I do.

Q - Are these among the shabu paraphernalias which can also be used as wrapper or container of ice candy or ice water?

A - I agree.

Q - The prosecution also presented as among the articles that you allegedly seized from Room 526 of Sundowner Hotel, this list of alleged debtors of shabu. Did I get you correctly?

A - Yes, sir.

Q - Now, did you try to investigate whether this list or the entries therein are in the handwriting of the accused, Edison Sanchez, or the accused, Teresita del Mar?

A - No, I did not examine that.

Q - As a matter of fact, you did not know whether these are the signatures of any of the accused?

A - No, sir.

Q - You do not know who personally prepared this list?

A - Yes, sir.

Q - Now, as a veteran law enforcer, Lt. Ughoc, you will agree with me on the importance of the issuance of a receipt whenever you search a place or a person or things. Is it not?

A - Yes, I agree.

Q - This receipt marked as Exhibit '2' was precisely made by you in order that one, to show to whomsoever that these are the things that were allegedly recovered and seized from Room 526. Is it not?

A - Yes, sir.

x x x x x x x x.

Q - Lt. Ughoc, the marked money in the sum of P1,200.00 was recovered by members of your team in the clutch bag of the accused together with the P36,000.00 Philippine Currency, owned by the accused. Is it not?

A - Yes, sir.

Q - And the P36,000.00 Philippine Currency and the marked money was recovered and seized by members of your team from the possession of accused, Teresita del Mar because it was placed in a clutch bag. Was it not?

A - Yes, sir.

Q - This list also was recovered from Room 526 and seized from Room 526. Was it not?

A - Yes, sir.

Q - You said that when you prepared the certification which was a list of the articles seized. Your main purpose was show what were the articles seized from Room 526. Is it not?

A - Yes, sir.

Q - But you will agree with me that this list of alleged debtors was not listed by you in this certification. Is it not?

A - Well, we have included that as a paraphernalia in the offense.

Q - Do you know what is the meaning of paraphernalia?

A - Instrument.

Q - Instrument used in smoking?

A - In the commission of the crime.

x x x x x x x x.

Q - In your affidavit dated October 30, 1989, the second to the last paragraph of the first page, you stated: 'That we brought the duo to our Hq NARCOM together with the seized evidences some assorted Shabu users whom she stated further to have a standing credit on her.' You will agree with me that by the wordings of your affidavit that you do not and you did not consider this list of shabu users and list of creditors of shabu paraphernalias. Did you not?

FISCAL ROCAMORA:

Your Honor, we request that the affidavit be confronted on the witness.

A - (Witness examining the joint affidavit of arresting officers and of poseur buyer executed on Oct. 30, 1989)

Well, it is just a matter of the composition of this affidavit.

Q - You likewise stated that among the evidences you seized from the accused from Room 526 was the alleged marked money which was seized and recovered by the members of your team from the clutch bag of the accused. Was it not?

A - Yes, sir.

Q - And you will also agree with me that the marked money which the members of your team seized and recovered from the clutch bag of the accused was not listed from this list of evidences?

A - Yes, sir.

Q - You will also agree with me, Lt. Ughoc, that the alleged 1 gram more or less of shabu, contained in a plastic container is not listed in this inventory?

A - Yes, sir.

ATTY. REMOTIGUE:

That will be all, Your Honor."

(Hearing of March 13, 1990, TSN, pp. 5- 8, Records, pp. 46-49)

On the other hand, Teresita del Mar averred that it was only when they arrived for the second time inside the hotel

after coming from the NARCOM office at Lahug, Cebu City, was she shown things she had not seen before, such as the shabu paraphernalia. Similarly, it was the first time she saw shabu when Lt. Ughoc showed it to her as allegedly taken from her refrigerator.

Thus, on cross examination, Del Mar testified as follows:

"Q - You mentioned that after bringing you to the Narcom Office at Lahug, Cebu City, you were again brought to the hotel at Room 526. Is this correct?

A - Yes, sir.

Q - What took place inside that room?

A - When we arrived for the second time inside the hotel, in the room, they showed me again things which I have not seen before.

COURT/to witness:

Q - What were those things?

A - Things regarding shabu.

Q - What do you mean things regarding shabu?

A - They said that can be used for shabu.

Q - Did you see shabu?

A - That was the first time I saw shabu when Lt. Ughoc took from refrigerator.

Q - How far was that clutch bag to that refrigerator when that PC seized that clutch bag?

WITNESS: (Witness indicating a distance of 2-3 meters).

COURT:

Q - And in whose hands did you see that shabu?

A - Lt. Ughoc, Your Honor.

Q - Was it shown to you?

A - Yes, Your Honor.

Q - Was the clutch bag still on that table when shabu was shown to you?

A - Yes, Your Honor.

Q - By then, that clutch bag was not touched by the PC?

A - Not yet, because they kept on searching my things yet.

Q - What I mean, when the shabu was shown to you that clutch bag was still untouched by him?

A - Not yet."

(Hearing of April 17, 1990, TSN, pp. 12-13; Records, pp. 143-144)

Her statements were corroborated on all material points by her co-accused Edison Sanchez, more specifically that the NARCOM officers were not able to get anything from that raid, except a weighing scale left by a friend of

Teresita del Mar (Hearing of May 7, 1990, TSN, pp. 4-6; Records, pp. 67-68)

Teresita del Mar further testified that the lists of buyers of shabu who were supposed to have bought shabu from her on credit do not belong to her. She did not make the entries therein, much less were they in her handwriting. According to her, the lists did not come from her room and that she saw them only in the NARCOM office (Hearing of March 28, 1990, TSN, pp. 17-18; Records, pp. 127-128). Correspondingly, as shown earlier Lt. Ughoc admitted that he did not try to investigate whether the list or the entries therein are in the handwriting of the accused Teresita del Mar or Edison Sanchez. In fact he did not even know if the signatures appearing therein are the signatures of said accused (Hearing of March 13, 1990, TSN, pp. 5-6; Records, pp. 46-47).

Finally, while the prosecution appeared to have a penchant for jumping at conclusions, among which was the seizure of P36,000.00 on the presumption that they were the proceeds of the crime because the accused has no legal means of livelihood (Hearing of March 13, 1990, TSN, pp. 7-8; Records, pp. 48-49). Teresita del Mar fully accounted for the money in her possession candidly admitting that she worked as a dancer or entertainer and she earned more than P3,000.00; that P3,000.00 is not enough for her expenses but her boyfriends who are married men defrayed her expenses; that when she checked in at Sundowners Hotel she had P20,000.00, the rest which is P16,000.00 was given to her by her boyfriend (Hearing of March 29, 1990, TSN, pp. 7-8; Records, pp. 59-60). Verily, when Teresita del Mar confessed her sordid way of life, she convincingly explained her possession of a large amount of money which had nothing to do with the sale of illegal drugs. In fact, as observed by the trial judge, under the circumstances, the seizure of aforesaid amount would not be warranted (Hearing of March 13, 1990, TSN, p. 8; Records, p. 49).

In the totality of the foregoing circumstance, the improbabilities and inconsistencies of the allegations of the prosecution cannot be ignored. The exacting test laid down by this Court in *People v. Nazareno*, 80 SCRA 484 (1977) was not satisfied. It was held that: "It is thus required that every circumstance favoring his innocence be duly taken into account. The proof against him must survive the test of reason, the strongest suspicion must not be permitted to sway judgment." Otherwise stated, moral certainty has not been reached.

PREMISES CONSIDERED, the judgment of conviction is REVERSED and SET ASIDE, and both appellants are ACQUITTED.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla and Regalado, JJ., concur.

Nocon, J., on leave.

* Penned by Judge Generoso A. Juaban.

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