

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. REDENTOR DICHOSO Y DAGDAG, SONIA DICHOSO Y VINERABLE AND JAIME PAGTAKHAN Y BICOMONG, ACCUSED. REDENTOR DICHOSO Y DAGDAG, ACCUS...

G.R. Nos. 101216-18. June 04, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Accused Redentor Dichoso y Dagdag appeals from the 11 June 1991 Decision of Branch 30 of the Regional Trial Court (RTC) of San Pablo City in Criminal Case No. 6711-SP(91) and Criminal Case No. 6712-SP(91)[1] finding him guilty beyond reasonable doubt of violating Section 15, Article III and Section 4, Article II, respectively, of the Dangerous Drugs Act of 1972 (R.A. No. 6425), as amended, and sentencing him in each of the said cases to suffer the penalty of "reclusion perpetua with all its accessory penalties, to pay a fine of P20,000.00 and the costs of the suit."

The informations in the above criminal cases were filed against Redentor Dichoso and his wife Sonia Dichoso y Vinerable on 8 March 1991.

The accusatory portion of the information in Criminal Case No. 6711-SP(91) reads as follows:

"That on or about February 23, 1991, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously sell, deliver, give way (sic) to another and distribute 1.3 grams of methamphetamine hydrochloride (sic) (shabu) and 6 decks of aluminum foil of shabu, a regulated drug without being authorized by law.

CONTRARY TO LAW."[2]

while that in Criminal Case No. 6712-SP(91) states:

"That on or about February 23, 1991, in the City of San Pablo, Republic of the Philippines and within the jurisdiction of this Honorable Court, the accused above-named, conspiring, confederating and mutually helping one another, did then and there wilfully, unlawfully and feloniously sell, deliver, give way (sic) to another and distribute dried marijuana fruiting tops, leaves and seeds, a dangerous drug, without being authorized by law."

CONTRARY TO LAW."[3]

Accused Jaime Pagtakhan was charged with illegally possessing a regulated drug (shabu) and, thus, violating Section 16, Article III of the Dangerous Drugs Act, as amended, in an information which was docketed as Criminal Case No. 6710-SP(91) in the court a quo.

Accused Sonia Dichoso y Vinerable could not be arrested because, in the words of the trial court, she "cannot be located." [4] The records do not show that the trial court took further steps to have her arrested.

The three (3) cases were consolidated for joint trial in Branch 30 of the RTC of San Pablo City and trial proceeded as against accused Jaime Pagtakhan and Redentor Dichoso after the two had entered a plea of not guilty upon arraignment. NARCOM agents S/Sgt. Iluminado Evangelista, Sgt. Fabian Gapiangao, C1C Rolando Bisenio and P/Maj. Rosalinda Royales, the forensic chemist, testified for the prosecution. Accused Redentor Dichoso and Jaime Pagtakhan, as well as barangay captain Francisco Calabia, testified for the defense. The latter identified a Sinumpaang Salaysay[5] in which he denounced the veracity of Exhibits "B," "C" and "D" and his signatures therein.

The evidence for the prosecution is summarized by the trial court as follows:

"On February 22, 1991, the Narcotics Command of the 4th Regional Unit stationed at Interior M. Paulino St., San Pablo City applied for a search warrant to be issued on the house of spouses Redentor Dichoso and Sonia Dichoso located at Farconville Subd., Phase II, San Pablo City. After searching questions on the applicant and his deponent the Court was satisfied that there existed probable cause to believe that indeed said spouses were keeping, selling and using an undetermined quantity of methamphetamine hydrochloride (sic) (shabu) and marijuana in said residence. Consequently, Search Warrant No. 028 was issued by the Court (Exhibit "A").

On February 23, 1991, (Saturday) at about 2:00 P.M. at the local NARCOM Unit stationed at Interior M. Paulino St., San Pablo City, T/Sgt. Iluminado Evangelista, the local District Commander organized a team to serve Search Warrant No. 028 upon the spouses Redentor Dichoso and Sonia Dichoso residing at Farconville Subd., Phase II, San Pablo City. Evangelista, the team leader, was with S/Sgt. Fabian Gapiangao, Sgt. Antonio Tila, CIC Rolando Besinio, Police Officer Michael Exconde and a driver. Upon approaching said residence the team met an old man and Evangelista introduced himself and his companions as Narcom agents duly armed with a search warrant. Evangelista asked for Redentor and Sonia and the old man opened the gate into the Dichoso compound for the Narcom Agents. The old man led them to the nipa house where inside Redentor, Jaime Pagtakhan and two other persons were sitting near a small table with suspected shabu and paraphernalia on top thereof. Taken aback the foursome did not move. Evangelista told them that they were Narcom agents, and that they should not make any move and they had with them a search warrant to serve. He then asked Sgt. Tila, a team member, to fetch for the barangay chairman (sic). In the meantime Evangelista served a copy of the search warrant to Redentor. After about 15 to 20 minutes Chairman Francisco Calabia arrived and was met by Evangelista who forthwith showed him a copy of the said warrant. Calabia read the search warrant and explained the contents thereof to Redentor.

Thereafter, the search ensued inside the nipa house. Evangelista discovered 200 grams more or less of suspected marijuana wrapped in plastic inside a cabinet which was standing on the right side upon entering the door of the nipa house. Likewise discovered by him inside the cabinet are six (6) decks of suspected shabu wrapped in an aluminum foil and the 'Golden Gate' notebook (Exhibit F) containing the list of suspected customers of dangerous and regulated drugs together with the corresponding quantity and prices. From Pagtakhan's right hand, Evangelista recovered a small quantity of suspected shabu.

Then, the search was shifted to the main house of the Dichosos. However, the search produced negative results.

Evangelista instructed Besinio to collect the confiscated items recovered at the nipa house of the Dichosos. Besinio separately wrapped the items whereupon he and Gapiangao made markings on the same. Besinio also put the names of Redentor and Sonia inside some of the pages of Exhibit "F". The team then got from the main house a plastic bag where all the confiscated items were put. Besinio sat in a corner of the nipa house and prepared in his own handwriting the PAGPAPATUNAY (Exhibit "B") attesting to the result of the search conducted by the NARCOM team listing thereon the different confiscated items, another PAGPAPATUNAY (Exhibit "C") attesting to the lawful manner the search was conducted, and the Receipt (Exhibit "D"), all dated February 23, 1991. Said exhibits were alternately given to Calabia who read the contents thereof before voluntarily affixing his signatures thereon. Then, he explained to Redentor and Pagtakhan the contents of said

exhibits. Afterwhich, Redentor likewise voluntarily affixed his signatures thereon. (Exhibits B-1, C-1 and D-3). Pagtakhan also affixed his signatures on Exhibit "B" and "D" opposite the items confiscated in his possession by Evangelista. A certain Angelito Ancot affixed his signature on Exhibits B and C also as witness. Redentor was then given a copy each of Exhibits B, C and D (Exhibits B-4, C-4 and D-4). Subsequently, Calabia and the Narcom team left the Dichoso residence. Said team brought with them for further investigation at their headquarters Redentor, Pagtakhan and the two other persons found inside the nipa house. Said two other persons who were later known to be a certain 'Jun' and a certain Bayani Salamat were set free by the Narcom after having convinced the investigators that they were innocent visitors or house guests of Redentor. Evangelista prepared a letter addressed to the PNP Crime Laboratory, Camp Vicente Lim, Calamba, Laguna, requesting examination of the confiscated drugs. At about 9:50 P.M. of that same day accused Redentor and Pagtakhan executed their separate waivers under Article 125 of the Revised Penal Code with the assistance of counsel (Exhibits "J" and "K").

On February 25, 1991 (Monday) the Narcom made a return of the search warrant and inventory to the Court (Exhibit E).

On February 26, 1991 (Tuesday) Besinio handcarried the confiscated items to the PNP Crime Laboratory (Exhibits "L" and "L-2") for examination. That same day P/Major Rosalinda L. Royales, Forensic Chemist concluded, after qualitative examination, that the one (1) transparent plastic bag containing 1.3 grams of suspected mehtamphetamine hydrochloride (sic) (shabu) placed in a plastic bag with markings and the six (6) foils containing 0.3 grams of suspected methamphetamine hydrochloride (sic) (shabu) wrapped in a foil and placed in a plastic bag with markings gave positive results for methamphetamine (sic) (shabu). Additionally, the one (1) aluminum foil containing 0.02 grams of methamphetamine hydrochloride (sic) (shabu) placed in a plastic bag with markings as confiscated from Pagtakhan gave positive results for methamphetamine hydrochloride [sic] (shabu) and the one (1) light green plastic bag containing 103.7 grams of suspected dried marijuana fruiting tops, crushed leaves and seeds wrapped in a newspaper gave positive results for marijuana (Exhibits M, series)."[6]

On 17 June 1991, the trial court promulgated its decision,[7] dated 11 June 1991, finding Jaime Pagtakhan and Redentor Dichoso guilty as charged. The dispositive portion of the decision reads:

"On the basis of the evidence on record, the Court finds that Redentor Dichoso violated Section 15, Article III and Section 4, 'Article II of the Dangerous Drugs Act. Also, it is the finding of the Court that Jaime Pagtakhan violated Section 16 of said Act. Both of them should be made to suffer the consequences of their unlawful acts.

WHEREFORE, premises considered, the Court hereby renders judgment in Criminal Case No. 6710-SP finding JAIME PAGTAKHAN guilty beyond reasonable doubt of the offense charged in the Information, hereby sentences him to suffer the straight penalty of Six (6) years and one (1) day of prision mayor and to pay the costs. In case he files an appeal, the bailbond for his provisional liberty is hereby fixed at double the amount of his present bailbond.

In Criminal Cases Nos. 6711-SP and 6712-SP, the Court hereby renders judgment finding accused REDENTOR DICHOSO Y DAGDAG guilty beyond reasonable doubt of the offenses charged in the Informations, hereby sentences him to suffer the penalty of reclusion perpetua with all its accessory penalties, to pay a fine of P20,000.00 and the costs of suit."[8]

Acting upon the ex-parte motion of the Assistant City Prosecutor, the trial court, in its Order of 25 June 1991,[9] clarified the sentence imposed on accused Dichoso by declaring that the sentence of reclusion perpetua refers to each of the two (2) cases against him, and amended the decision by inserting the words "in each case" after the words "to suffer" and before the words "the penalty" in the decretal portion thereof.

Accused Redentor Dichoso filed a Notice of Appeal.[10]

The records do not disclose that accused Jaime Pagtakhan appealed from the decision. The transmittal letter of the clerk of court of the RTC, dated 7 August 1991, does not make any reference to Criminal Case No. 6710-SP(91) and its original record was not forwarded to this Court.[11]

Nevertheless, the docket section of this Court entered in the docket the three (3) criminal cases in the court below and numbered them as G.R. Nos. 101216-18, erroneously including in the cover of the rollo the name of Jaime Pagtakhan as an accused-appellant.

In the Appellant's Brief filed on 5 February 1992,[12] accused Redentor Dichoso, henceforth referred to as the Appellant, urges this Court to reverse the decision because the trial court erred in:

"I. x x x NOT QUASHING SEARCH WARRANT NO. 028 AND DISMISSING THE CASE AGAINST THE ACCUSED.

II. x x x CONVICTING THE ACCUSED ON THE BASIS OF ILLEGALLY SEIZED AND/OR PLANTED EVIDENCE.

III. x x x ADMITTING PROSECUTION'S EXHIBITS B, C AND D WITHOUT THE ACCUSED BEING ASSISTED BY COUNSEL.

IV. x x x CONVICTING THE ACCUSED ON THE BASIS OF EVIDENCE INSUFFICIENT TO PROVE THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT.

V. x x x COMPLETELY DISREGARDING ACCUSED'S EVIDENCE THAT THE LAND AND NIPA HUT FROM WHERE THE PROHIBITED, REGULATED (sic) AND SETS OF PARAPHERNALIAS (sic) WERE ALLEGEDLY BELONG TO ANOTHER PERSON."[13]

In support of the first and second assigned errors which are jointly discussed, appellant contends that Search Warrant No. 028, obtained and executed by the NARCOM agents, is a general warrant because it was issued for "Violation of RA 6425 known as the Dangerous Drugs Act of 1972 as amended" and did not specify the particular offense which he violated under the said law, contrary to the requirements prescribed by the Constitution and the Rules of Court, and that it was issued in violation of Section 3, Rule 126 of the Rules of Court which provides that "no search warrant shall issue for more than one specific offense." It was, he asserts, issued for three (3) possible offenses, viz.: (a) illegal possession of marijuana dried leaves, (b) illegal possession of methamphetamine hydrochloride, and (c) illegal possession of opium pipe and other paraphernalia for prohibited drug. He then argues, following this Court's ruling in *Stonehill vs. Diokno*[14] which condemned general warrants and barred the admission of any evidence obtained by virtue thereof, that the articles seized from the nipa house could not be used as evidence against him and be made the basis of his conviction.

Appellant further claims that he was framed by the police officers. He states that a certain Jun planted the deck of shabu found on the table where he and his companions were gathered around. Jun allegedly placed the shabu there after asking permission to use it, then he went out to meet Sgt. Evangelista and the members of the NARCOM team outside the house. Jun purportedly did not return to the hut anymore, leaving his friend Bayani Salamat behind. Appellant and Jaime Pagtakhan were also allegedly handcuffed immediately, while Salamat was not and was, in fact, released without being interrogated. To bolster his claim, appellant cites the testimony of Barangay Captain Calabia that the search which yielded the shabu, marijuana and drug paraphernalia was conducted even before his arrival; that when he arrived, the seized articles were already on the table, and that the appellant was already handcuffed. Calabia also assailed the veracity of Exhibits "B," "C" and "D."

In his third assignment of error, appellant contends that (1) Exhibit "B" (a "Pagpapatunay" attesting to the result of the search conducted by the NARCOM team and listing the items confiscated), (2) Exhibit "C" (a

"Pagpapatunay" attesting to the lawful manner of the search), and (3) Exhibit "D" (the Receipt for Property Seized) are inadmissible in evidence since he signed them while under police custody without having been accorded his Constitutional rights to remain silent and to counsel. These exhibits, he argues, constitute uncounselled extrajudicial confessions.

In his fourth assignment of error, appellant alleges that he cannot be convicted for violation of R.A. No. 6425, as amended, for unlawfully selling, delivering and giving away to another, and distributing 1.3 grams of methamphetamine hydrochloride (shabu) and dried marijuana leaves, fruit tops and seeds since he was not caught "in flagrante." He posits the view that in the light of the definition of "delivering" and "selling" in Section 2 of the Act, only the overt acts of unlawfully selling, delivering, dispensing, transporting and distributing prohibited and regulated drugs are punishable under Sections 4 and 15 of the said Act, respectively. He points out that according to Article 3 of the Revised Penal Code, mere intention is not a crime. He further argues that Exhibit "F" cannot be a basis for his conviction because (1) the alleged transactions mentioned therein are undetermined and could refer to a loan, chattel mortgage or sale, but not to the dispensing and delivering of shabu and marijuana as the lower court presumed; (2) the names of Redentor Dichoso or "Redy Dichoso" and Sonia Dichoso appearing in the said notebook were entered or written by C1C Orlando Besinio himself, and without such entry, there is nothing therein which would associate it with the appellant; and (3) it is inadmissible in evidence because it is not among the items particularized in the search warrant. He concludes this assigned error with a claim that the trial court erred in holding that a considerable quantity of shabu and marijuana was found in his residence because 1.3 grams of shabu and six (6) decks of aluminum foil of shabu can by no means be characterized as "considerable," especially taking into account his admission that he sometimes uses shabu.

In his last assigned error, appellant asserts that the nipa house and the lot where it is located do not belong to him but to his brother, Abner Dichoso, hence, the search conducted therein was unconstitutional and illegal and the items obtained thereby are inadmissible in evidence against him.

Appellee, thru the Office of the Solicitor General, refutes the arguments raised by the appellant and prays that We affirm the assailed decision.

We shall now pass upon the assigned errors and the arguments adduced in support thereof.

On the validity of the search warrant: In its entirety, the search warrant in question reads as follows:

"Republic of the Philippines

REGIONAL TRIAL COURT

4th Judicial Region, Branch 30

San Pablo City

People of the Philippines,

Plaintiff,

-versus- SEARCH WARRANT NO. 028

REDENTOR DICHOSO -for-

and SONIA DICHOSO

of Farconville Sub., VIOLATION OF RA 6425

Phase II, San Pablo known as the 'Dangerous

City, Drugs Act of 1972' as

Respondents. amended

x ----- -x

SEARCH WARRANT

TO ANY OFFICER OF THE LAW:

Greetings:

It appearing to the satisfaction of the undersigned after examining under oath, TSg. Iluminada S. Evangelista and his witness Marlon Alcayde that there is probable cause to believe that the above-named defendants are illegally in possession of undetermined quantity/amount of dried marijuana leaves and Methamphetamine Hydrochloride (Shabu) and sets of paraphernalias (sic) stored inside the nipa hut within the compound of their residence at Farconville Sub., Phase II, San Pablo City which should be seized and brought to the undersigned.

You are hereby commanded to make an immediate search at reasonable hour of the day or night of the premises above-described and forthwith seize and take possession of the above-stated marijuana leaves, shabu and sets of paraphernalias (sic) and bring the same to the undersigned to be dealt with as the law directs.

Witness my hand this 22nd day of February, 1991, at San Pablo City.

(SGD.) J. AUSBERTO B. JARAMILLO, JR.

(TYP) J. AUSBERTO B. JARAMILLO, JR.

Judge"[15]

It is clear that the search warrant cannot be assailed as a general search warrant because while it is for "Violation of RA 6425 known as the 'Dangerous Drugs Act of 1992 as amended,'" the body thereof, which is controlling, particularizes the place to be searched and the things to be seized, and specifies the offense involved, viz., illegal possession of marijuana and shabu and paraphernalia in connection therewith. These are evident from the clause, "are illegally in possession of undetermined quantity/amount of dried marijuana leaves and methamphetamine Hydrochloride (Shabu) and sets of paraphernalias stored inside the nipa hut within the compound of their residence at Farconville Sub., Phase II, San Pablo City."

Appellant's contention that the search warrant in question was issued for more than one (1) offense, hence, in violation of Section 3, Rule 126 of the Rules of Court, is unpersuasive. He engages in semantic juggling by suggesting that since illegal possession of shabu, illegal possession of marijuana and illegal possession of paraphernalia are covered by different articles and sections of the Dangerous Drugs Act of 1972, the search warrant is clearly for more than one (1) specific offense. In short, following this theory, there should have been three (3) separate search warrants, one for illegal possession of shabu, the second for illegal possession of marijuana and the third for illegal possession of paraphernalia. This argument is pedantic. The Dangerous Drugs Act of 1972 is a special law that deals specifically with dangerous drugs which are subsumed into "prohibited" and "regulated" drugs and defines and penalizes categories of offenses which are closely related or which belong to the same class or species. Accordingly, one (1) search warrant may thus be validly issued for the said violations of the Dangerous Drugs Act.

In *Olaes vs. People*, [16] which was cited by the Solicitor General, We sustained a search warrant similarly

captioned and rejected the argument of the petitioner therein that it was a general warrant, thus:

"The petitioners claim that the search warrant issued by the respondent judge is unconstitutional because it does not indicate the specific offense they are supposed to have committed. There is, therefore, according to them, no valid finding of probable cause as a justification for the issuance of the said warrant in conformity with the Bill of Rights. In support of this argument, they cite *Stonehill v. Diokno*, where Chief Justice Concepcion struck down the search warrants issued therein for being based on the general allegation that the petitioners had committed violations of 'Central Bank Laws, Tariff and Customs Laws, Internal Revenue Code and Revised Penal Code.' x x x

x x x

We have examined the search warrant issued in the instant case and find it does not come under the strictures of the *Stonehill* doctrine. In the case cited, there was a bare reference to the laws in general, without any specification of the particular sections thereof that were alleged to have been violated out of the hundred of prohibitions contained in such codifications. There is no similar ambiguity in the instant case.

While it is true that the caption of the search warrant states that it is in connection with 'Violation of RA 6425, otherwise known as the Dangerous Drugs Act of 1972,' it is clearly recited in the text thereof that 'There is probable cause to believe that Adolfo Olaes alias 'Debie' and alias 'Baby' of No. 628 Comia St., Filtration, Sta. Rita, Olongapo City, has in their possession and control and custody of marijuana dried stalks/leaves/seeds/cigarettes and other regulated/prohibited and exempt narcotics preparations which is the subject of the offense stated above.' Although the specific section of the Dangerous Drugs Act is not pinpointed, there is no question at all of the specific offense alleged to have been committed as a basis for the finding for probable cause. The search warrant also satisfies the requirement in the Bill of Rights of the particularity of the description to be made of the 'place to be searched and the persons or things to be seized.'"

The rationale We laid down in *Prudent vs. Dayrit*[17] holds true in the instant case. There, We upheld the validity of a search warrant assailed as having been allegedly issued for more than one (1) offense since it did not contain any reference to any particular provision of P.D. No. 1866 that was violated, when allegedly P.D. No. 1866 punishes several offenses. We said:

"In the present case, however, the application for search warrant was captioned: 'For Violation of PD No. 1866 (Illegal Possession of Firearms, etc.).' While the said decree punishes several offenses, the alleged violation in this case was, qualified by the phrase 'illegal possession of firearms, etc.' As explained by respondent Judge, the term 'etc.' referred to ammunitions and explosives. In other words, the search warrant was issued for the specific offense of illegal possession of firearms and explosives. Hence, the failure of the search warrant to mention the particular provision of PD No. 1866 that was violated is not of such a gravity as to call for its invalidation on this score.

Besides, while illegal possession of firearms is penalized under Section 1 of PD No. 1866 and illegal possession of explosives is penalized under Section 3 thereof, it cannot be overlooked that said decree is a codification of the various laws on illegal possession of firearms, ammunitions and explosives; such illegal possession of items destructive of life and property are related offenses or belong to the same species, as to be subsumed within the category of illegal possession of firearms, etc. under P.D. No. 1866. x x x"

We, therefore, agree with the Solicitor General that the search warrant in question contains no fatal infirmity that may justify its invalidation.

Since Search Warrant No. 028 is valid, the articles seized by virtue of its execution may be admitted in evidence. Consequently, the trial court committed no error in denying the appellant's motion to quash the said warrant and refusing to dismiss the informations filed against him.

Frame-Up: This Court rejects the appellant's claim that he was framed. This defense requires strong and convincing evidence because of the presumption that the law enforcement agents acted in the regular performance of their official duties.[18] Appellant failed to rebut this presumption. He did not even attempt to prove that the NARCOM agents who obtained the search warrant, conducted the search and recovered the prohibited drugs had motives other than to enforce the law and stem the menace of drug addiction and trafficking which has already reached an alarming level and has spawned a network of incorrigible, cunning and dangerous operations.[19] It may be stressed here that the defense of frame-up can be easily fabricated and the accused in drugs cases almost always take refuge in such a defense.[20]

Furthermore, as correctly noted by the Solicitor General, appellant's claim of a frame-up only concerns the deck of shabu allegedly taken out of the pocket of one Jun who asked for and was readily permitted by the appellant to use shabu on that occasion. It does not concern, much less explain, the origin of the other prohibited drugs and paraphernalia seized during the search.

Admissibility of Exhibits "B" "C" and "D": There is merit to the appellant's claim that Exhibits "B," "C" and "D" partake of the nature of uncounselled extrajudicial confessions made while under the custody of the NARCOM agents and, therefore, violative of Section 12, Article III of the 1987 Constitution.[21] These exhibits are not "simply inventories or receipts of articles seized from appellant" as the appellee wants this Court to believe.[22] A clearer examination thereof shows that C1C Rolando Bisenio, who prepared them, deliberately wrote, in bold letters below the name REDENTOR D. DICHOSO (over which the appellant was made to sign) the words "MAY-ARI" in Exhibit "B" and "MAY-ARI BAHAY" in Exhibit "C," while the word "OWNER" is printed below the sub-heading "COPY OF THE RECEIPT RECEIVED" in Exhibit "D." By such descriptive words, appellant was in fact made to admit that he is the owner of the articles seized (Exhibit "B"), the house searched (Exhibit "C") and the articles inventoried in the receipt (Exhibit "D"). Thus, while it may be true that the appellant was not asked specific questions regarding the vital issue of ownership, Bisenio obtained an admission from the former through the said exhibits. This was a clever way of circumventing the aforesaid Constitutional rights to counsel and to remain silent. Admittedly, at the time Bisenio prepared the exhibits, the appellant was already in the effective custody of the NARCOM agents and deprived in a significant way of his freedom of action. The preparation of the exhibits substituted, for all legal intents and purposes, the custodial interrogation.

There was no need of requiring the appellant to sign documents similar to Exhibits "B" and "C." As to Exhibit "D," which is the receipt for property seized, it is a document required by Section 10, Rule 126 of the Rules of Court to be given by the seizing officer to the lawful occupant of the premises in whose presence the search and seizure were made. It is true that in *People vs. Olivares*,[23] We made the following statements:

"Exhibit "A" and "L" which identically show the specimen signatures, are also admissible. These documents are part and parcel of a mandatory and normal procedure followed by the apprehending and seizing police officers. In these three Exhibits, the accused-appellant did not give any statement against his own interest. The mere signing of the documents did not amount to Olivares' subjection to a custodial investigation wherein an accused is required to give statements about his involvement in the offense and wherein the right to be informed of his rights to silence and to counsel would otherwise be invoked. (*People v. Rualo*, 152 SCRA 635 [1987]). Guilt is proved by other evidence."

Yet, as explicitly indicated therein, Olivares "did not give any statement against his own interest," unlike in the case of the appellant whose name Bisenio described as the owner.

Nevertheless, the above discussions do not alter the result of this appeal. As correctly stated by the appellee, these exhibits were not appreciated by the trial court as extrajudicial confessions but merely as proof that the articles therein enumerated were obtained during the search which, by the way, was sufficiently established by the

testimonies of the NARCOM agents independently of the said exhibits.

Seizure of Exhibit "F": It is contended by the appellant that Exhibit "F," the brown notebook containing the entries of names and figures, should not have been admitted in evidence because it was not one of those specifically mentioned in the warrant, hence, its seizure was unjustified. This so-called warrant rule -- that only those listed in the search warrant may be seized -- which the appellant claims to have been enunciated in 1920 in *Uy Khetin vs. Villareal*,^[24] and which he now summons to his rescue, is not without exceptions. Among such exceptions is the plain view doctrine enunciated in *Harris vs. United States*^[25] and *Coolidge vs. New Hampshire*^[26] which has been adopted in our jurisdiction.^[27]

In *Harris*, the Federal Supreme Court of the United States of America ruled:

"It has long been settled that objects falling in the plain view of an officer who has a right to be in the position to have that view are subject to seizure and may be introduced in evidence. *Ker v. California*, 374 US 23, 42-43, 10 L ed 2d 726, 743, 83 S Ct 1623 (1963); *United States v. Lee*, 274 US 559, 71 L ed 2d 1202, 47 S Ct 746 (1927); *Hester v. United States*, 265 US 57, 68 L ed 2d 898, 44 S Ct 445 (1924)."

We are not, however, inclined to rule that the foregoing exception applies to this case, for the reason that the search warrant was not for unlawful sale of shabu or marijuana but for unlawful possession thereof as shall be hereinafter discussed and that the notebook per se is not an article possession of which is illegal or criminal. Exhibit "F" proves neither sale nor possession.

Ownership of the House Searched: The view of the appellant that the search was illegal and the articles seized thereby cannot be used against him in evidence since he does not own the nipa house searched or the lot wherein it was built, is unmeritorious. It is not necessary that the property to be searched or seized should be owned by the person against whom the search warrant is issued; it is sufficient that the property is under his control or possession.^[28] It was established, even by the defense's own evidence, that the appellant and his spouse have been using the said nipa house. He admitted that the nipa house is actually part of and adjacent to the big or main house in the Dichoso residential compound, and that he and his family have been using the nipa house as a resting place even before the search.^[29]

Any doubt as to the appellant's control over the nipa house where the seized articles were recovered is wiped out by the testimony of the defense's own witness, Francisco Calabia, who affirmed that the appellant and his wife Sonia Dichoso actually reside therein while Redentor's parents and brother reside in the big house.^[30]

And now to the culpability of the appellant. He contends that he could not be held guilty under Section 15, Article III (for unlawful sale of shabu) and under Section 4, Article II (unlawful sale of marijuana) of the Dangerous Drugs Act in Criminal Case No. 6711-SP(91) and Criminal Case No. 6712-SP(91), respectively, because he was not caught in the act of selling or delivering shabu and marijuana, and that the finding of guilt against him was based solely on Exhibit "F" which, according to the trial court, "contains conclusive proof of Redentor's unlawful business of selling shabu and marijuana to customers, which included Pagtakhan and Bayani Salamat."

After a careful review and evaluation of the evidence on record, this Court finds that the evidence of the prosecution is insufficient to sustain a conviction for unlawful sale of shabu in Criminal Case No. 6711-SP(91) and for unlawful sale of marijuana in Criminal Case No. 6712-SP(91). There is, however, overwhelming evidence which establishes with moral certainty the guilt of the appellant for illegal possession of shabu and marijuana under Section 16, Article III and Section 8, Article II, respectively, of the Dangerous Drugs Act of 1972, as amended.

In convicting the appellant as charged, the trial court relied mainly on Exhibit "F," which it considered as

"conclusive proof" of the appellant's drug pushing, and the ruling in *People vs. Toledo*.^[31] It said:

"Redentor may claim that no evidence exists to show that he was drug pushing i.e., selling, delivering, giving way (sic) to another and distributing shabu and marijuana. The Court is not convinced. Exhibits "F" among other things was found inside his nipa house where, according to Calabia, the said spouses reside. Redentor exercised control and custody of Exhibit F. He is commonly referred to by his nickname 'Redy' which incidentally appears in some pages of Exhibits F. Pagtakhan, on the other hand, answers to the nickname 'Jimmy' which also appears in some of the pages of Exhibit "F". Pagtakhan did not rebut the prosecution's allegation that he is the same 'Jimmy' appearing in Exhibit F. Bayani Salamat, one of the companion (sic) of Redentor inside the nipa house at the time the Narcom agents arrived, also appears to be a customer of Redentor (see pages 2 and 3 reverse side of page 5, Exhibit "F"). Redentor, according to Pagtakhan, is called for (sic) his nickname 'Redy'. That name appears on Exhibit F (see pages 2, 3, 4, and 5, thereof). The Court finds and so holds that Exhibit F contains conclusive proof of Redentor's unlawful business of selling shabu and marijuana to customers which includes Pagtakhan and Bayani Salamat. x x x. Furthermore, there is a considerable quantity of shabu and marijuana taken by the Narcom agents from the residence of Redentor which strongly indicates an intention on the part of Redentor to sell, distribute and deliver said dangerous and regulated drugs without being authorized by law (*People vs. Toledo*, 140 SCRA 259)."^[32]

We find, however, that the conclusions drawn from Exhibit "F" are merely conjectural. For one, the prosecution did not attempt, and thus failed, to prove that the handwritten entries therein were made by the appellant. It could have easily done so by presenting, in accordance with the Rules, either a handwriting expert or an ordinary witness familiar with the handwriting of the appellant.^[33] There is, as well, no competent proof that the said entries refer to transactions regarding shabu or marijuana and that the figures appearing therein pertain to prices of dangerous drugs.

The facts in the instant case do not warrant the application of *People vs. Toledo*,^[34] which the trial court and the appellee cited as authority. While in that case, this Court stated that the possession of a considerable amount of a prohibited drug (three (3) plastic bags of marijuana) coupled with the fact that the accused was not a user of the prohibited drug, indicate nothing except the intention to sell and distribute it, the conviction of Toledo for violation of Section 4 of the Dangerous Drugs Act of 1972, as amended, was not based on that ground alone, but on the accused's extrajudicial confession, held to be valid and admissible, wherein he disclosed the details of his transactions of buying and selling marijuana by narrating how and from whom he bought the three (3) plastic bags of marijuana found in his possession, to whom he would sell it, and for how long he had been engaged in pushing prohibited drugs. In the instant case, appellant disclaims ownership of Exhibit "F" and avers that the names Redentor and Sonia Dichoso written on several pages thereof were actually written by prosecution witness C1C Orlando Bisenio.^[35] Other than Exhibit "F," there is no evidence of sale, delivery, distribution or transportation of prohibited drugs by the appellant.

The other case cited by the appellee, *People vs. Claudio*,^[36] is of no help to the prosecution. In that case, the accused was convicted of the violation of Section 4 of R.A. No. 6425 for her act of transporting marijuana and not of selling or delivering the same, thus:

"Claudio contends that there was no delivery as there was no recipient of the prohibited drugs. Therefore, she may not be convicted under Sec. 4 of Rep. Act No. 6425.

The contention is without merit. A closer perusal of the subject provision shows that it is not only delivery which is penalized but also the sale, administration, distribution and transportation of prohibited drugs. Claudio was caught transporting 1.1 kilos of marijuana, thus the lower court did not err in finding her guilty of violating Sec. 4."^[37]

In a prosecution for illegal sale of marijuana, what is material is the proof that the selling transaction transpired

coupled with the presentation in court of the corpus delicti as evidence,[38] and that to sustain a conviction for selling prohibited drugs, the sale must be clearly and unmistakably established.[39]

In the case at bar, not a single witness of the prosecution, not even Sgt. Evangelista, claims to have seen the appellant sell or deliver shabu or marijuana to anybody. Although Sgt. Evangelista testified that he was told by his civilian informer or agent that the latter was able to buy shabu from and was offered marijuana by the appellant, the said civilian informer, who was presented by the NARCOM when it applied for a search warrant, was not presented in court during the trial of the cases below.

The unlawful sale of shabu or marijuana must be established by unequivocal and positive evidence.[40]

There is no doubt, however, that the appellant is guilty of unlawful possession of shabu under Section 16, Article III and unlawful possession of marijuana under Section 8, Article II of the Dangerous Drugs Act of 1972, as amended, in Criminal Case No. 6711-SP(91) and Criminal Case No. 6712-SP(91), respectively. The crime of unlawful possession of shabu, a regulated drug, under Section 16 is necessarily included in the crime of unlawful sale thereof under Section 15. Similarly, the crime of unlawful possession of marijuana under Section 8 is necessarily included in the crime of unlawful sale of marijuana under Section 4 of the Act.[41]

The appellant cannot evade liability for illegal possession of dangerous drugs by his admission that he sometimes uses shabu. Section 30 of R.A. No. 6425, which provides that a drug dependent who voluntarily submits himself for confinement, treatment and rehabilitation in a center, shall not be criminally liable for any violation of Section 8 and Section 16 of the law, does not apply to the appellant because occasional "use" of a dangerous drug is not the same as "drug dependence" which is defined as "a state of psychic or physical dependence, or both, on a dangerous drug, arising in a person following administration or use of that drug on a periodic or continuous basis." [42] Throughout the trial of the case below, the appellant, whose petition for bail due to health reasons was denied, has not been shown to be a drug dependent and even if he was, indeed, a drug dependent, he did not voluntarily submit himself for rehabilitation as required by the law.

On the contrary, appellant's admission during the trial that he used shabu "once in a while" [43] only helps ensure his conviction for violation of Section 16 of the Dangerous Drugs Act because the unauthorized use of a regulated drug like shabu is one of the acts punishable under the said section.

The penalty for illegal possession of regulated drugs like shabu is "imprisonment ranging from six years and one day to twelve years and a fine ranging from six thousand to twelve thousand pesos." [44] The same penalty is provided for illegal possession of marijuana, a prohibited drug. [45] The Indeterminate Sentence Law [46] should, however, be applied. It provides that in imposing a prison sentence for an offense punished by a law other than the Revised Penal Code, the court shall sentence the accused to an indeterminate sentence, the minimum term of which shall not be less than the minimum fixed by law and the maximum of which shall not exceed the maximum term prescribed by the same.

WHEREFORE, in view of all the foregoing, the appealed Decision of the Regional Trial Court of San Pablo City, dated 11 June 1991, in Criminal Cases Nos. 6711-SP(91) and 6712-SP(91) is hereby modified. As modified, accused-appellant REDENTOR DICHOSO y DAGDAG is hereby found guilty beyond reasonable doubt of violation of Section 16, Article III of the Dangerous Drugs Act of 1972 (R.A. No. 6425), as amended, in Criminal Case No. 6711--SP(91) and Section 8 of Article II of the said Act in Criminal Case No. 6712-SP(91). Applying the Indeterminate Sentence Law, he is hereby sentenced in each case to suffer the penalty of imprisonment ranging from eight (8) years as minimum to twelve (12) years as maximum, and to pay a fine of Twelve Thousand Pesos (P12,000.00).

Costs against the accused-appellant.

SO ORDERED.

Feliciano, (Chairman), Bidin, Romero, and Melo, JJ., concur.

- [1] Per Judge J. Ausberto B. Jaramillo, Jr.
- [2] Original Record (OR), Crim. Case No. 6711-SP (91), 1.
- [3] Id., Crim. Case No. 6712-SP (91), 1.
- [4] OR, Crim. Case No. 6711-SP (91), (back of page 22).
- [5] Exhibit "1" -- Pagtakhan and Dichoso, Folder of Exhibits, 11-12.
- [6] OR, Crim. Case No. 6711-SP (91), 45-48.
- [7] Id., 44-50.
- [8] OR, Crim. Case No. 6711-SP (91), 50.
- [9] Id., 54.
- [10] Id., 52.
- [11] Rollo, first unpaginated page.
- [12] Rollo, 58, et seq.
- [13] Brief for Appellant, 1c.

[14] 20 SCRA 383 [1967].

- [15] Exhibit "A," Crim. Cases Nos. 6711-SP (91) and 6712-SP (91), Folder of Exhibits, 1.

[16] 155 SCRA 486, 490-491 [1988].

[17] 180 SCRA 69, 80-81 [1989].

- [18] Section 3(m), Rule 131, Revised Rules of Court; People vs. Macuto, 176 SCRA 762 [1989]; People vs. Umali, 193 SCRA 493 [1991]; People vs. Como, 202 SCRA 200 [1991].
- [19] People vs. de la Cruz, 184 SCRA 416 [1990].
- [20] People vs. Agapito, 154 SCRA 694 [1987].
- [21] Appellant mentions Section 20, Article IV of the Constitution, which had already been superseded by Sections 12 and 17, Article III of the 1987 Constitution.
- [22] Brief for Plaintiff-Appellee, 20.

[23] 186 SCRA 536 [1990].

[24] 42 Phil. 886 [1920].

[25] 390 U.S. 324; 19 L Ed 2d 1067.

[26] 403 U.S. 443.

[27] Roan vs. Gonzales, 145 SCRA 687 [1986]; People vs. Evaristo, G. R. No. 93828, 11 December 1992, citing REGALADO, Remedial Law Compendium, vol. 2, 1989 ed., 427.

[28] Burgos vs. Chief of Staff, 133 SCRA 800 [1984].

[29] TSN, 11 June 1991, 34.

[30] TSN, 4 June 1991, 17.

[31] 140 SCRA 259 [1985].

[32] OR, 49-50.

[33] See Sections 49 and 50, Rule 130, Rules of Court.

[34] Supra.

[35] TSN, 21 May 1991, 38-39.

[36] 160 SCRA 646 [1988].

[37] Id., 654.

[38] People vs. Mariano, 191 SCRA 136, 148 [1990], citing People vs. Vocente, 187 SCRA 100 [1990] and People vs. Macuto, supra.

[39] People vs. Alilin, 206 SCRA 772 [1992].

[40] People vs. Ramos, 186 SCRA 184, 192-193 [1990]; emphasis supplied.

[41] People vs. Tantiado, G.R. Nos. 92795-96, 2 September 1992.

[42] See Section 2, paragraphs (g) and (p), R.A. No. 6425.

[43] TSN, 11 June 1991, 54.

[44] Section 16, R.A. No. 6425, as amended.

[45] Second paragraph, Section 8, R.A. 6425, as amended by B.P. Blg. 179 [1982]; People vs. Ramos, supra.

[46] R.A. 4103, as amended.

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