

PEOPLE OF THE PHILIPPINES, PLAINTIFF/APPELLEE, VS. EDWIN GO AND PENELOPE GO Y TABAYO, ACCUSED/APPELLANTS.

G.R. Nos. 104357-58. September 26, 1994

Ponente: FELICIANO, J.

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FELICIANO, J.:

In Criminal Case No. 16705 of the Regional Trial Court, Branch 23, of Cebu, Edwin Go and Alexander Go were charged with violation of Section 15 of Article III, in relation to Section 21 of Article IV, of R.A. No. 6425 as amended, known as the Dangerous Drugs Act of 1972. The amended information[1] against the two (2) accused read as follows:

"The undersigned Asst. City Prosecutor of the City of Cebu amending the Information dated October 9, 1989, accuses Edwin Go Y Vilbar and Alexander Go alias Alex, for the crime of violation of Sec. 15, Art. III in relation to Sec. 21, Art. IV of R.A. No. 6425, as amended, committed as follows:

That on or about the 8th day of October 1989, at about 9:30 p.m., more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conniving and confederating together and mutually helping with each other, with deliberate intent, did then and there sell, deliver and give away two (2) grams of shabu powder, containing Methamphetamine HCL, a regulated drug, without authority of law.

Contrary to law."

In Criminal Case No. 16706 filed in the same court, Penelope Go was charged with violation of Section 16 of Article III of the same Act, under an amended information[2] which read as follows:

"The undersigned Asst. City Prosecutor of the City of Cebu amending the Information dated October 9, 1989, accused Penelope Go y Tabayo of the crime of Violation of Section 16, Art. III of R.A. No. 6425 as amended, committed as follows:

That on or about the 8th day of October 1989, at about 9:30 p.m., more or less, in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, did then and there have in her possession and control, sixty (60) grams of shabu powder containing Methamphetamine HCL, a regulated drug, without authority of law.

Contrary to law."

Upon arraignment, the three (3) accused entered a plea of not guilty.

After a joint trial, the trial court rendered a decision dated 4 November 1991, which imposed the following judgment:

"WHEREFORE, judgment is hereby rendered:

1. Finding accused Edwin Go guilty beyond reasonable doubt for violation of Sec. 15, Art. III, in relation to

Sec. 21, Art. IV, R.A. No. 6425, as amended, and hereby sentencing him to suffer the penalty of life imprisonment and a fine of P30,000.00.

2. Finding accused Penelope Go guilty beyond reasonable [doubt] for violation of Sec. 16, Art. III of R.A. No. 6425, as amended and hereby sentencing her to a penalty of imprisonment of SIX (6) YEARS AND ONE (1) DAY to TWELVE (12) YEARS and a fine of TWELVE [THOUSAND] (P12,000.00) PESOS.

3. Acquitting Alexander Go for insufficiency of evidence.

4. Costs against accused Edwin Go and Penelope Go.

x x x x x x x x"

Appellants Edwin Go and Penelope Go claim that the trial court committed the following errors:

I

The lower court gravely erred in believing in the testimony of the prosecution witnesses by the simple expedience of asserting that it found no reason or motive why they would impute falsely a serious and unfounded charge against the accused and that from their demeanor in the stand it did not doubt their testimony even as the lower court contradicted itself in acquitting co-accused Alexander Go who was as much of the whole scenario for insufficiency of evidence.

II

The lower court gravely erred in believing the prosecution's assertion that the search warrant was shown to the accused-appellants before the search and in giving full faith and credit to the certification of 're-conduct of search' purportedly signed by them including as it does an admission that shabu, previously marked money and paraphernalia were found during the aforesaid search.

III

The lower court gravely erred in failing to consider conflicting testimonies of witnesses and exculpatory evidences in the conduct of the alleged buy-bust operation and the search in the residence of accused-appellants.

IV

The lower court erred in totally discrediting the version of the accused-appellants and their witnesses failing thus in not acquitting the accused even if only upon the ground of reasonable doubt."

The trial court found as the relevant facts the following:[3]

"[On] the morning of October 8, 1989, Major Isa Hassan NARCOM Commanding Officer in Region 7 ordered Sgt. Ricardo S. Inding to conduct a test-buy on a certain Edwin Go who was reported to be engaged in the sale of 'SHABU POWDER' to drug abusers in the city. This report was confirmed by several surveillance checks made by elements of NARCOM on said suspect. In compliance with the said order, Sgt. Inding with Sgt. [Alejandro] Binan immediately went to Edwin Go's residence. There, [they] succeeded in buying from Edwin Go two decks of shabu powder weighing 0.4 grams for which [they] paid P600.00. Thereafter, [they] went back to their headquarters and reported to Major Isa Hassan the result of [their] mission. Whereupon, Major Hassan submitted the shabu powder for field test examination to Sgt. Cebellos, the NARCOM property custodian who, after conducting a field test, confirmed that the two decks of shabu which Sgt. Inding bought from Edwin Go were positive for Methamphetamine HCL which is a regulated drug. Major Hassan then organized a team to do a buy-bust operation on Edwin Go. For this purpose, he applied for a search warrant

with Judge Leonardo Canares, an RTC Judge. Since it was a Sunday, the NARCOM team had a hard time contacting the judge. Later, however, they were able to contact the judge and the search warrant (Exh. 'A') was issued by the latter at past 8:00 o'clock in the evening.

At past 9:00 p.m. that evening, the members of the teams were already posted near the house of Edwin Go. Sgt. Ricardo Inding acted as poseur-buyer while Sgt. Binan and other NARCOM officers acted as back-up components. There were actually two teams organized. One team was assigned to the buy-bust operation while the other was to conduct the search. These teams were supervised by no less than Major Isa Hassan himself.

After the men were posted in their respective positions, Sgt. Inding proceeded to the door of the house of Edwin and Penelope Go. He was met at the door by Alexander Go who asked him what he wanted. He told Alexander that he wanted to buy two grams of shabu powder. After they agreed on the price, Alexander received the P2,400.00 consisting of 24 one-hundred peso bills which were previously marked. Incidentally, the serial numbers of these hundred peso bills were indicated in the search warrant issued by the RTC judge. Alexander Go went inside the sala and gave the money to Edwin Go and the latter asked from Penelope for the shabu. Sgt. Inding remained standing at the door watching what transpired. Penelope took from her waist the stuff and gave it to Edwin who passed it on to Alexander. Then Alexander gave the shabu to Sgt. Inding. After Sgt. Inding received the stuff, he gave the pre-arranged signal to Sgt. Alejandro Binan who was posted about 5 to 8 meters away. Sgt. Binan then signaled to Major Hassan and his men who were positioned at about 20 meters away from Sgt. Binan. Just as Sgt. Binan was making his signal to Major Hassan, Alexander Go, who sensed that something was in the offing, immediately fled and escaped. Then the NARCOM team led by Sgt. Binan rushed inside the sala. Edwin Go and his wife were immediately placed under arrest. At the time of the arrest, Penelope was wearing a night gown and had her front covered by a towel. Major Hassan, together with Sgt. Savillano, Sgt. Mohammadshaid, CIC Rosaroso and some other agents, followed into the house. Sgt. Alejandro Binan announced to Edwin Go that he had a search warrant. The searching team then proceeded to search the house. At the sala, there were several other people. CIC Romeo Dimahusid, a military man, was there. Also identified was a certain Leland Tabayag, a nephew of Penelope. The two children of Edwin and Penelope were also present. The boarders also witnessed the incident. In the course of the search of the masters bedroom, the team found and recovered from a drawer, 50 grams of shabu and paraphernalia for packing and using shabu x x x.

Aside from the aforementioned paraphernalia, they also recovered a weighing scale with a table balance (Exh. 'K'). Sgt. Binan made a body search on Edwin Go. He found from Edwin Go's wallet the 24 one hundred peso bills which were previously marked. Penelope Go was not bodily searched as there was no woman agent with the team. After searching for more than an hour from the two bedrooms, to the kitchen and up to the bathroom, the team was about to stop their search and start preparing their inventory and report when they observed that Penelope Go, who was sitting down at the sala with her nighties on stood up and walked towards the bathroom. They observed that when she stood up, she placed both hands on her front between the legs. The team suspected that she was hiding something underneath. So, Major Hassan politely asked her to surrender whatever it was that was placed inside. Penelope Go took that something out. It was a package of shabu which she voluntarily surrendered to the raiding team.

Major Hassan testified that it took them almost two (2) hours before they could leave the house of the Gos. He explained that there were many things that were found in the search but he saw to it that nothing, except those that were indicated in the search warrant, was taken by the team. x x x A Certification Re-Conduct of Search was prepared. This was signed by Edwin Go and Penelope Go and witnessed by CIC Romeo Dimahusid and Mr. Leland Tabayag (Exh. 'H'). Major Isa J. Hassan also signed a Receipt of Property Seized (Exh. 'I') which contained all the properties brought out of the house of the Gos by the team.

After the search, Edwin and Penelope Go were brought to the NARCOM headquarters at Lahug, Cebu City where they were detained the whole evening. The following day, Edwin Go, Penelope Go and Alexander Go were charged in an Information (CBU 16705) for violation of Sec. 15, Art. III in relation to Sec. 21, Art. IV

[of] R.A. No. 6425 as amended. Another information (CBU 16706) was also filed against Edwin Go and Penelope [Go] for violation of Sec. 16 of Art. III of R.A. No. 6425 as amended. Later, however, the Informations were amended by dropping Penelope Go from CBU 16705 and by dropping Edwin Go from CBU 16706. As a result, Edwin Go and Alexander Go are the accused in CBU 16705 and only Penelope Go is charged in CBU 16706. x x x.

The following day of the arrest of the accused, the shabu that was recovered from the residence of the accused, as well as the 2 grams that was sold to the NARCOM agents were submitted to the PC/INP Crime Laboratory Services for laboratory examination to determine the presence of prohibited or regulated drugs.

The laboratory findings of Lt. Myrna Arriola were contained under Chemistry Report No. C-344--89 which found the subject shabu positive for methamphetamine hydrochloride, a regulated drug. x x x."

The above facts were testified to basically by Major Isa Hassan,[4] Sgt. Ricardo Inding,[5] Sgt. Ibrahim Mohammadshaid,[6] Sgt. Alejandro Binan,[7] Sgt. Francisco Savillano,[8] Sgt. Felipe Gomez,[9] CIC Jesus Ceballos[10] and P/Lt. Myrna Arriola.[11] Except for P/Lt. Arriola, the above witnesses were all members of the 7th Narcotics Regional Unit, Cebu City, Cebu, who had conducted the test-buy, buy-bust, search and arrest of the accused. P/Lt. Arriola is a member of the PC/INP Crime Laboratory Services Unit, based in Cebu City.

Appellants presented their own version of the facts. Their story was summed up by the trial court in the following manner:[12]

"x x x October 8, 1989 was a Sunday. At 9:00 o'clock a.m., they [Edwin and Penelope Go] together with their children Emmylou and Emmanuel went to attend mass at the Sto. Nino church. After the mass ended at 10:00 o'clock, they went home. Before reaching their house, they passed by the house of Edwin's father which is located in the same compound, in order to greet the latter's wife who was celebrating her birthday. There, they were told to come back in the evening as there was going to be a birthday party. At six in the evening, the whole family went to the party. After two hours, they went home as Edwin was suffering from an allergy and had to take some medicines. That was 8:00 in the evening. The couple went immediately inside their bedroom. Edwin immediately went to bed while his wife Penelope went to the bathroom which is located inside their bedroom in order to take a bath. Then suddenly she heard a crashing sound outside their bedroom. Penelope heard her husband's voice saying, 'Don't make any move because my wife is having a shower inside the bathroom.' Then another voice was heard in Tagalog, 'If you will not open, we will open fire.' Penelope was shocked and she hurriedly put on her nighties; she did not have any other thing with which to cover her body. She did not even have a pair of panties. When she went out of the bathroom, she saw two men who asked her to sit down beside her. They told her not to be afraid as they were from NARCOM. At the same time, they asked her to cooperate as they were looking for something. She told them to look for it. They asked her to surrender that something as they would not place her in jail. Then they brought her out of [her] bedroom. Earlier, the men took Edwin out of [the couple's] bedroom and brought him to the sala where more military men were seen. Edwin also saw his boarders there. Some were seated on the staircase while others were [seated] at the table. Penelope saw her husband at the sala sitting down on a sofa. She saw her children, together with their boarders, namely, Sancho Alcalde, Erlinda Dano, Elizabeth Manigos and some of her helpers. She saw that her children were crying. According to her, there were no less than 20 military men inside their house. Upon seeing her in her nighties, her husband asked her what happened to her. He asked why was she only in that scant attire. She told him that she could not do anything as she was afraid of the military men. Her husband told her to cover her body. Someone who heard got a towel with which to cover her body.

Then the men started searching the place. They went inside their bedroom and scattered all her things. They went to the kitchen. The search continued for two hours. All the while, they kept on prodding her to give that something they were looking for even while she repeatedly told them that she didn't have that something. Asked by the court what they meant by that something, Penelope Go reluctantly answered it was shabu that they were looking for. After the men searched every inch and corner of their house and found nothing, a man

wearing a jacket suddenly appeared. A military man told them that he was Major Isa Hassan, NARCOM Regional Commander and asked them not to be afraid as he would help them. Major Hassan smiled at them and entered their bedroom. A few minutes later, he came out and announced, 'Ito na. Ito na.' He was bringing with him a figurine. Major Hassan allegedly only smiled and announced that they would be brought to the NARCOM Headquarters for investigation. They were made to ride on a jeep. Their children were crying because they wanted to go with them.

At the Headquarters, the lights were very bright. There were things on the table which they saw for the first time. Edwin Go was asked to point to the things on the table but he refused. His wife who just entered the room asked Edwin to comply. So he did. Major Hassan asked them to sign a piece of paper which they did not bother to read. They signed because they were afraid. They were confined at the Headquarters as they were not allowed to go home.

Leland Tabayag denied having been present during the search of the house of his aunt Penelope. He denied having signed as witness to the 'Conduct of Search' during the search on the night of October 8, 1991. How could he have signed, he argues, when he was all the time at a party on the occasion of the inauguration of a new set of officers for the senior high school class of Cebu Central Colleges? He came home only at 2:00 a.m. on October 9, 1989. It was his grandmother who told him that his aunt and his uncle were brought to the NARCOM office. Early the following morning, Alexander Go asked him to bring some food where Edwin and Penelope were confined since they had no food to eat. So he brought the food there. Upon his arrival, a military man approached him and asked him to sign a piece of paper. He signed it without knowing what it was. That, according to him was the reason why his signature appears on the document."

It will be seen that the basic defense of the two (2) appellants was simply denial and that the two (2) denied the following:

- (1) that there was a test-buy operation conducted by police authorities early in the morning of 8 October 1989, in the course of which 0.4 gms. of shabu was bought by Sgt. Inding from Edwin Go;
- (2) that a buy-bust operation was carried out by the police authorities at past 9:00 o'clock on the same day, i.e., 8 October 1989;
- (3) that the police authorities had a search warrant which was shown to the appellants prior to the search;
- (4) that Sgt. Romeo Dimahusid and one Leland Tabayag were present in the house of Edwin and Penelope Go during the buy-bust operation;
- (5) that the two (2) appellants had seen the paraphernalia for using and packing shabu before and during the buy-bust operation, the appellants asserting that they saw such paraphernalia only after their arrest and detention in the Narcom Headquarters in Lahug, Cebu City;
- (6) that shabu was found in appellants' house during the buy-bust operation, appellants claiming that such a drug was found only after Major Isa Hassan went inside their bedroom and later went out announcing "Ito na. Ito na."; and
- (7) that Penelope Go had concealed inside her underwear sixty (60) gms. of shabu, appellants contending that she could not have done so since, at that time, she wore no underwear.

In the first assignment of error, appellants contend that since the trial court had professed its belief in the sincerity and truthfulness of the prosecution witnesses, declaring that it "had no reason to doubt the veracity of their testimony," and that the Court had "found no motive or reason why the prosecution witnesses would impute falsely a serious and unfounded charge against the accused,"[13] the trial court should have also convicted Alexander Go who, according to the prosecution witnesses, was present and participated in the buy-bust

operation. In other words, appellants insist that the trial court had contradicted itself in convicting Edwin and Penelope Go while acquitting Alexander Go.

We are not persuaded by the above argument. We do not believe that the trial court contradicted itself when it acquitted Alexander Go although it at the same time convicted the spouses Edwin and Penelope Go. Conviction and acquittal are simply the consequences of the presumption of the innocence of the accused being either overcome, or not overcome, by the evidence presented by the prosecution. The relevant portion of the decision of the trial court follows:

"In view of the foregoing findings, this Court is convinced beyond reasonable doubt, that Edwin Go and Penelope Go are guilty of the crime charged in their respective Informations filed against them. As regards Alexander Go, however, prosecution's evidence is insufficient to establish his guilt. Although he put up alibi as his defense, which did not convince this Court, anyway, prosecution's evidence against him was weak. Alexander Go was not a resident in the house which the NARCOM agents raided. The testimony of Sgt. Inding indicated that Alexander Go was about to go out of the door when he met Sgt. Inding who told him that he wanted to buy shabu. If he was the one who received the money and gave same to Edwin Go, it does not necessarily mean that he was involved in the transaction. Weak as the defense appears, prosecution's evidence against Alexander Go is weaker. Prosecution should not draw strength from the weakness of the defense." [14] (Under-scoring supplied)

Assuming, for purposes of argument merely, that the trial court had erred in acquitting Alexander Go, that error was simply the result of appreciation of the evidence by the trial court. That (assumed) error did not in any way affect the jurisdiction of the trial court and the judgment of conviction it rendered in respect of Edwin and Penelope Go.

In their second assignment of error, appellants insist that they had not been shown the search warrant before the search on their residence was conducted and that, accordingly, the trial court had erred in ruling to the contrary.

In concluding that a search warrant had been presented to appellants prior to the commencement of the search, the trial court relied on (1) a document entitled "Certificate of Re-conduct of Search" [15] which had been prepared by the police authorities but signed by appellant Edwin Go and Penelope Go; and (2) an admission during pre-trial by appellants that there had been a valid search warrant. [16]

The trial court quoted the "Certification of Re-conduct of Search" in its decision:

"The claim of Penelope and Edwin Go that they were not shown any search warrant is belied by Exhibit 'H' wherein both of them signed as to the conduct of the search and which is quoted as follows:

CERTIFICATION OF RE-CONDUCT OF SEARCH

TO WHOM IT MAY CONCERN:

That on or about 8 Oct. '89 at about 9:30 p.m., elements of NARCOM headed by Major Isa J. Hassan PC conducted a raid at our residence at Osmena Blvd. St., Cebu City pursuant to the search warrant duly issued by Hon. Judge Leonardo B. Canares which was done in an orderly manner and in accordance with law.

That during the period of search, nothing had been taken except shabu, the previously marked money and the paraphernalia and the search made we were always present and in fact we voluntarily allowed the raiding team to conduct the search upon presentation of search warrant.

That no force or intimidation was applied neither any harm inflicted on us.

That a receipt of property seized was issued to us.

That during the search, two (2) of our boarders were present and witnessed [the search].

SGD. Illegible SGD. Illegible

Edwin Go Penelope Go

WITNESS:

SGD. Illegible

CIC Romeo Dimahusid PC

SGD. Illegible

Mr. Leland Tabayag

SGD. Illegible"[17]

The above quoted "Certification" is a brief but complex document and cannot be admitted in its entirety against Edwin and Penelope Go. We consider that the second paragraph of the "Certification" amounts to an implied admission that shabu, the marked money, and shabu paraphernalia had been found by the police authorities at the residence of Edwin and Penelope Go and therefore, subject to the control and custody of Edwin and Penelope Go and necessarily in their possession. To this extent, the "Certification" is a declaration against interest and tacit admission of the crime charged considering that mere possession of prohibited drugs is a punishable offense.[18] The second paragraph of the "Certification" is, in other words, a self-incriminatory statement made at a time when Edwin and Penelope Go were not assisted by counsel and under circumstances (i.e., in the course of or immediately after the search of the residence and seizure of quantities of shabu) which render intelligent waiver of their right against self-incrimination open to serious doubt.

At the same time, the Court considers that there is nothing to prevent admission of the "Certification" to substantiate the fact that a search warrant issued by Hon. Judge Leonardo B. Canares had been brought to the attention of Edwin and Penelope in the course of the raid or buy-bust operation carried out at their residence and that in the course thereof, no force or intimidation had been exercised upon Edwin and Penelope Go.

Moreover, quite apart from the "Certification" signed by appellants, the police authorities were entitled to the benefit of presumption of regularity in the performance of official functions. Since there was no question that a search warrant had been obtained by the police authorities from Judge Leonardo L. Canares, it is quite reasonable to assume that the police authorities in the instant case did exhibit that search warrant to Edwin and Penelope Go before commencing their search or in any case, during the course thereof. The police authorities had no motive or reason to conceal that warrant; to the contrary, they had every reason to show the warrant to Edwin and Penelope.

Finally, if by claiming that they had not been shown any search warrant, Edwin and Penelope Go sought to throw doubt upon the carrying out of the buy-bust operation itself, we must note that the police authorities in the present case proceeded "by the book," as it were: (a) they conducted a preliminary or test-buy operation;[19] (b) they submitted the substance purchased in the test-buy operation to a field test chemical examination;[20] (c) they applied for and obtained a search warrant from a duly authorized magistrate, identifying therein the twenty-four (24) marked P100.00 bills which were later recovered in the course of the buy-bust operation;[21] (d) they in fact proceeded to the residence of Edwin and Penelope Go and purchased two (2) gms. of shabu powder and forthwith identified themselves as police officers;[22] and (e) they carried out a search of the residence of Edwin and Penelope Go. The cumulative weight of the evidence thus submitted by the prosecution clearly satisfied the standard of proof beyond reasonable doubt. There is also no question that appellants were unable to overcome the evidence of the prosecution since they limited themselves to denials and raising issues of tangential relevance

such as whether or not the search warrant had been exhibited to them.

In their third assignment of error, appellants claim that the trial court had disregarded inconsistencies in the testimonies of prosecution witnesses. Appellants also contended, predictably, that the shabu and related paraphernalia obtained from their residence had been merely "planted" during the search of their house by the law enforcement officers.[23]

The alleged inconsistencies pointed out by appellants relate firstly to the observation of the trial court that:

"x x x both [Edwin and Penelope Go] of them were already in the sala during the consummation of the sale and immediately before the search was announced,"[24]

which statement allegedly conflicts with the testimony of Sgt. Ricardo Inding on cross-examination that:

"the arrest of Penelope Go and Edwin Go [was effected] in the door of the residence of Edwin Go."[25]

If inconsistency there is in the above statements, we consider that it is an inconsistency that has no material impact upon the correctness of the basic conclusions reached by the trial court. Actually, there appears no necessary inconsistency between the two (2) above statements. The consummation of the sale of shabu in appellants' living room and their subsequent arrest by their front door are, according to the record, events that took place sequentially and not simultaneously.

Appellants also alleged inconsistency between the testimony of Sgt. Ricardo Inding to the effect that a buy--bust operation was conducted and the same officer's testimony that the police authorities were armed with a search warrant.[26] According to appellants, if the police authorities were in fact armed with a search warrant, "why should the Narcom agents resort to [a] buy-bust operation." [27]

We see no necessary inconsistency between, on the one hand, previously obtaining a search warrant for a search of an identified house and on the other hand, carrying out a buy-bust operation in the same house. While a search warrant may not, as a strictly legal proposition, be indispensable for the carrying out of a buy-bust operation, the police authorities in the instant case took the precaution of obtaining a search warrant where the marked bills were identified by serial number in anticipation of the very kind of argument that appellants here made: that no buy-bust operation had in fact been carried out and that, therefore, all the items seized by the police authorities had been illegally obtained in the absence of a search warrant and, therefore, inadmissible in evidence. We consider that, far from throwing doubt on the reality of the buy-bust operation conducted by the police authorities, the securing of a search warrant (return of which would have to be made to the issuing judge) is a measure that should be encouraged earnestly to the end that the police authorities will respect the constitutional and legal rights of the persons whose premises are to be subjected to search.

Finally, in *People v. Roldan*, [28] this Court observed that:

"x x x [it] will not pretend to establish on a priori basis what detailed acts police authorities might credibly undertake and carry out [in] their entrapment operations."

The selection of appropriate and effective means of entrapping drug traffickers is something best left to the discretion of police authorities who are burdened with this unenviable task.

In their assertion that evidence against them "had been planted" by the police authorities, appellants argued that:

(a) the name of Penelope Go did not appear in the Application for the Search Warrant nor in the Return of Search Warrant and Turn--over of Seized Evidence;

(b) the number of grams of the prohibited drugs seized from each of the appellants had not been specified, in

disregard of the provisions of Section 10, Article 126 of the Rules of Court which read:

"Sec. 10. Receipt for the Property Seized. -- The officer seizing the property under the warrant must give a detailed receipt of the same to the lawful occupant of the premises in whose presence the search and seizure was made."

(c) the prosecution had failed to present CIC Romeo Dimahusid, whose signature had appeared on the "Certification Re-conduct of Search" to rebut appellants claim that he was in fact not in the Go residence during the buy-bust operation and search;

(d) it took the police authorities two (2) hours to retrieve evidence that was found in the bedroom of appellants; and

(e) that the twenty-four (24) marked P100.00 bills would be found in Edwin Go's wallet immediately after the consummation of the sale of the shabu, was improbable.

After careful consideration of the record of this case, we do not consider that appellants have proven their assertion that the police officers had merely "planted" evidence in the residence of Edwin and Penelope Go.

The proposition that because the name of Penelope Go did not appear in the Application for and Return of the Search Warrant, the evidence must have been "planted" in the residence of the Gos, is simply a non sequitur; so also are the assertions that the police authorities searched the residence of Edwin and Penelope Go for two (2) hours before they found the evidence in the bedroom of appellants, and that the marked peso bills were found in Edwin Go's wallet after the consummation of the sale of the shabu. What may be stressed in this connection is the positive testimony of prosecution witnesses who had conducted the buy-bust and search operation, to the effect that sixty (60) gms. of shabu were recovered from Penelope's person.[29] This fact is corroborated by the "Receipt of Property Seized"[30] executed and signed by Mayor Isa Hassan, which states that he (Hassan) seized and took possession from Edwin and Penelope Go:

- "1. More or less 60 grams of shabu powder;
2. More or less 50 grams of shabu powder;[31]
3. One (1) table balance (Tricle brand);
4. Assorted paraphernalia in packing and for using shabu powder; and
5. Two Thousand Four Hundred Pesos in twenty-four (24) one hundred peso bills. Marked money."
(Underscoring ours)

That the police authorities had not specified the number of grams of prohibited drugs which had been recovered from each appellant does not show that evidence of the prosecution had been merely "planted." That failure of detail does not detract from the fact that the police authorities had seized prohibited drugs from the residence of Edwin and Penelope Go and that the couple had been caught in flagrante selling and possessing shabu.

As to the non-presentation by the prosecution of CIC Romeo Dimahusid as a witness for the prosecution although he had signed the "Certification Re-conduct of Search," this Court

"x x x has repeatedly held that it is up to the prosecution to determine who should be presented as witnesses on the basis of its own assessment of their necessity. In the case at bar, it was unnecessary x x x because there was sufficient evidence to establish the case for the prosecution. x x x"[32]

The last assignment of error of appellants attacks the trial court for failing to give credence to the testimony of the ten-year old son of Edwin and Penelope Go that his mother, Penelope, was not wearing any underwear at the time

she was arrested. This supposed error obviously relates to a question of fact and to the appraisal by the trial court of the credibility of witnesses. The familiar rule is that:

"The Court accords great respect to the factual conclusions drawn by trial courts, particularly on the matter of credibility of witnesses, since the trial judge had the opportunity of observing the deportment and demeanor of witnesses while listening to them speak, enabling him to form at first hand a judgment as to whether witnesses were telling the truth or not. When the issues is one of credibility of witnesses, the Court has almost invariably accorded the highest of respect to the findings of the trial court.

Appellate courts will not disturb the credence (or lack of it) accorded by the trial court to the testimony of witnesses unless it be clearly shown that the trial court had overlooked certain facts which, if considered, would affect the result of the case or arbitrarily disregard facts and circumstances of significance in its appraisal." [33]

Appellants have not shown any reason why we should here depart from the above general rule. Moreover, again, the supposed error of fact is inconsequential for it does not impact upon the basic finding that appellants had been caught in flagrante selling and possessing shabu.

Finally, we turn to the determination of the penalty properly imposable upon appellants Edwin Go and Penelope Go. Under Sections 15 and 16 of R.A. No. 6425, as last amended by R.A. No. 7659, and as construed and applied with retroactive effect in the recent Decision of this Court in *People v. Martin Simon* (G.R. No. 93028, 29 July 1994), and given the circumstances that (a) the "shabu" sold by appellant Edwin Go consisted only of two (2) grams of "shabu" powder, while the "shabu" found in the possession and control of appellant Penelope Go consisted of sixty (60) grams of "shabu" powder, and that (b) no aggravating or mitigating circumstance was found in either of the instant cases, the penalty properly imposable upon both appellant Edwin Go and appellant Penelope Go is prision correccional in its medium period. Applying the Indeterminate Sentence Law, again in accordance with the majority ruling of this Court in the *Martin Simon* case, appellant Edwin Go is properly sentenced to imprisonment for a term ranging from, as minimum, six (6) months of arresto mayor to a maximum of two (2) years and four (4) months of prision correccional in its medium period. Appellant Penelope Go, considering the quantity of "shabu" found in her possession and control, is properly sentenced to imprisonment for a term ranging from, as minimum, six (6) months of arresto mayor to a maximum of four (4) years and two (2) months of prision correccional in its medium period.

WHEREFORE, for all the foregoing, the decision of the Regional Trial Court of Cebu, Branch 23, in Criminal Cases Nos. 16705 and 16706 is hereby AFFIRMED, with the modifications, however, that the fines of P30,000.00 and P12,000.00 imposed respectively on appellants Edwin Go and Penelope Go are DELETED, and that appellant Edwin Go shall suffer imprisonment for an indeterminate period ranging from six (6) months of arresto mayor as minimum to two (2) years and four (4) months of prision correccional as maximum. Appellant Penelope Go shall suffer imprisonment for an indeterminate period ranging from six (6) months of arresto mayor as minimum to four (4) years and two (2) months of prision correccional as maximum. Costs against appellants.

SO ORDERED.

Romero, Melo, and Vitug, JJ., concur.
Bidin, J., on leave.

[1] Records, pp. 79-80.

[2] Records, pp. 81-82.

- [3] Trial Court Decision, Rollo, pp. 35-39.
- [4] TSN, 17 September 1991, pp. 4-8.
- [5] TSN, 10-11 July 1990 and 2 October 1991, pp. 1-31 and 1-22 and 1-4.
- [6] TSN, 13 September 1990, pp. 4-6.
- [7] TSN, 18 October 1990, pp. 1-20.
- [8] TSN, 22 October 1990, pp. 1-23.
- [9] TSN, 15 January 1991, pp. 1-21.
- [10] TSN, 20 November 1990, pp. 1-41.
- [11] TSN, 11 September 1990, pp. 1-9.
- [12] Trial Court Decision, Rollo, pp. 40-43.
- [13] Id.
- [14] Rollo, p. 50.
- [15] Exhibit "H," Folder of Exhibits, p. 18.
- [16] Appellants' Brief, Rollo, pp. 22-83.
- [17] Trial Court Decision, Rollo, pp. 45-46.
- [18] *People v. Mauyao*, 207 SCRA 732 (1992); *People v. De la Pena*, 199 SCRA 28 (1991); *People v. Yutuc*, 188 SCRA 1 (1990); *People v. Turla*, 167 SCRA 278 (1988).
- [19] Folder of Exhibits, pp. 4-6.
- [20] Id., pp. 8-11.
- [21] Id., pp. 1 and 6.
- [22] Trial Court Decision, Rollo, p. 49.
- [23] Appellants' Brief, Rollo, p. 87.
- [24] Trial Court Decision, p. 17.
- [25] TSN, 11 July 1990, p. 20.
- [26] Appellants' Brief, Rollo, p. 93.
- [27] Id.
- [28] 224 SCRA 536 (1993).**
- [29] TSN, 10 July 1990, p. 24; TSN, 18 October 1990, p. 18; TSN, 22 October 1990, pp. 5-6 and 13; TSN, 17 September 1991, pp. 5-7; and TSN, 2 October 1991, pp. 2-3.
- [30] Folder of Exhibits, p. 3.
- [31] Shabu recovered from a drawer during the search of the residence of the accused; See Trial Court Decision,

Rollo, p. 37.

[32] *People, v. Atilano*, 204 SCRA 278 at 283.

[33] *People v. Roldan*, *supra*.

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