

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CHEN TIZ CHANG AND CHENG JUNG SAN A.K.A. WILLY TAN, ACCUSED-APPELLANTS.

G.R. Nos. 131872-73. February 17, 2000

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Because prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the "buy-bust" operation, the Court relies on the rule that the weighing of evidence, particularly conflicts in the testimonies of witnesses, is best left to the discretion of the trial court, which had the unique opportunity to observe their demeanor, conduct and manner while testifying. Hence, its factual findings are accorded respect, even finality, absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. Once the elements of the crime are established, the hackneyed defense of frame-up or "hulidap" must be clearly proven by the appellants. Again, the defense being factual, its tenability depends largely on the trial court's assessment of the credibility of the testimonial evidence of the accused. In the present appeal, the defense has failed to convince us that the trial court's Decision should be disbelieved or modified, much less reversed. On the contrary, we believe that the said Decision is clear, convincing and correct.

The Case

Before the Court is an appeal by Chen Tiz Chang and Chen Jung San, also known as Willy Tan,[1] challenging the October 16, 1997 Decision[2] of the Regional Trial Court (RTC) of Quezon City (Branch 95) in Criminal Case No. Q-96-68250-51, finding them guilty of illegal possession and sale of shabu[3] and sentencing each of them to two counts of reclusion perpetua. The decretal portion of said Decision reads as follows:

"WHEREFORE, judgment is hereby rendered in the following:

1. In Crim. Case No. Q-96-68250, the Court finds both accused, Chen Tiz Chang and Chen Jung San a.k.a. Willy Tan, GUILTY beyond reasonable doubt of the offense of [v]iolation of Sec. 15, Rep. Act 6425, as amended by Rep Act 7659, and hereby sentences each one of them the penalty of reclusion perpetua and to pay a FINE of one million (P1,000,000.00) pesos each; and,
2. In Crim. Case No. Q-96-68251, the Court finds both accused, Chen Tiz Chang and Chen Jung San a.k.a. Willy Tan, GUILTY beyond reasonable doubt of the offense of [v]iolation of Sec. 16, Rep. Act 6425, as amended by Rep. Act 7659 and hereby sentences each one of them the penalty of reclusion perpetua and to pay a FINE of one million (P1,000,000.00) pesos each."[4]

On November 4, 1996, two separate Informations were filed[5] against both appellants. The first, charging them with selling or offering to sell shabu, is reproduced below:

"The undersigned accuses CHEN TIZ CHANG and CHEN JUNG SAN a.k.a. WILLY TAN [of] violation of

Sec. 15, Art. III, in rel. to Sec. 2 (e), (f), (m), (o), Art. I of R.A. No. 6425 as amended by P.D. No. 1683, committed as follows:

"That on or about the 31st day of October, 1996 in Quezon City, Philippines, the said accused, conspiring together, confederating with and mutually helping each other not having been authorized by law to sell, dispense, deliver, transport or distribute any regulated drug, did then and there willfully and unlawfully sell or offer for sale 2,017.7 grams [of] white crystalline substance known as 'SHABU' containing methamphetamine hydrochloride, which is a regulated drug." [6]

The other Information indicted them for possession and/or use of shabu and is worded as follows:

"The undersigned accuses CHEN TIZ CHANG and CHEN JUNG SAN [of] violation of Sec. 16, Art. III in relation to Section 2 (e) (2), Article 1 of R.A. 6425, committed as follows:

"That on or about the 31st day of October, 1996 in Quezon City, Philippines, the said accused, conspiring, confederating with and mutually helping each other did then and there willfully, unlawfully and knowingly possess and/or use 943.5 grams of methamphetamine hydrochloride (shabu) a regulated drug, without the necessary license and/or prescription therefor, in violation of said law." [7]

When arraigned on November 12, 1996, appellants pleaded [8] not guilty. [9] The Motion for Bail, filed on November 27, 1996, [10] was denied by the court a quo on February 17, 1997. [11] In an Order dated June 23, 1997, [12] it also denied their subsequent Motion for Reconsideration. After due trial, it promulgated its assailed Decision.

Hence, this appeal. [13]

The Facts

The Prosecution's Version

In its Brief, [14] the Office of the Solicitor General presents the prosecution's version of the facts in this wise:

"Prior to October 31, 1997, Police Superintendent Allan Purisima, commander of Task Force Spider, NCRPO, Camp Bagong Diwa, Taguig, Metro Manila received reliable information about illegal activities of Chinese nationals, particularly the sale of shabu. Upon receipt of such classified information, Police Superintendent Purisima ordered the surveillance of two (2) Chinese nationals who were reportedly members of a drug syndicate. With the assistance of an informant, members of Task Force Spider were able to establish contact with suspected members of the drug syndicate (TSN, December 18, 1996, p. 7), two (2) of whom are herein appellants.

"In the early morning of October 31, 1996, through the informant, members of Task Force Spider were able to get in touch with appellants with a use of a cellular phone and negotiate a drug deal with them. Appellant agreed to deliver and sell two (2) kilos of shabu at the parking lot of the Maalikaya Health Palace located at Quezon Avenue, Quezon City (Ibid., 7).

"PO2 Hilarion Juan, a member of Task Force Spider, testified that on October 31, 1996, at 7:00 o'clock in the morning, Police Superintendent Allan Purisima conducted a briefing at Camp Bagong Diwa, Taguig, Metro Manila. The subject of the briefing was the buy-bust operation involving the sale of shabu by appellants at the Maalikaya Health Palace parking lot at Quezon City (Ibid., 5-7; TSN, December 16, 1996, p. 4). The members of the task force were assigned to observe and monitor the suspects at Maalikaya Health Palace (TSN, December 16, 1998, p. 3-4). The briefing, which lasted for around 30 minutes, was attended by four police officers, namely: PO2 Hilarion Juan, SPO2 Jesus Bernal Camacho, SPO2 Bernardito Lagdameo and PO2 Jose Bernadino Jr. (Ibid., 5-6). PO2 Hilarion Juan was designated to act as the poseur-buyer together with the informant, while the three (3) other police officers were tasked to position themselves at some distance from the poseur-buyers and assist in the buy-bust operation (TSN, December 18, 1996, p. 7).

"After the briefing, the members of the team prepared the buy-bust money made of genuine P100.00 peso bills and P500.00 peso bills in the amount P700,000.00, while the rest were photocopied money (Ibid., 7), all of which totaled P2,000,000.00 (TSN, April 8, 1997, p. 9). From their office at Bagong Diwa, Taguig, Metro Manila, they proceeded to the Maalikaya Health Palace, in Quezon City.

"At 11:00 o'clock that morning, PO2 Juan, the informant and other police officers positioned themselves at the Maalikaya Health Palace parking area. After thirty (30) minutes, a red-colored Daihatsu Feroza bearing plate No. TBU-479 (Exhibits 'L' to 'L-3') (hereinafter described as Feroza) arrived with the appellants on board (TSN, December 16, 1996, p. 5). PO2 Juan and the informant approached appellants who were then on board the Feroza. Appellants conversed with PO2 Juan (TSN, December 16, 1996, p. 6) and the informant introduced PO2 Juan to appellants as an interested buyer (TSN, December 16, 1996, p. 8). Chen Jung San left the place and drove the Feroza towards EDSA while Chen Tiz Chang was left behind (TSN, December 16, 1996, pp. 6-7). Later, the Feroza reappeared (Ibid., pp. 5-7). Appellant Chen Tiz Chang emerged from the Feroza and initiated conversation about the sale of shabu (TSN, December 18, 1996, p.11).

"The informant instructed PO2 Juan to hand over the suitcase containing buy-bust money to Chen Tiz Chang (Ibid., pp. 11-12) which Juan did and in return Chen Tiz Chang handed to PO2 Juan a black bag (Exhibit 'D') which contained 2 plastic transparent bags of shabu (Ibid., 12). (Exhibits 'E' and 'F'). After the exchange, PO2 Juan opened the black bag (Exhibit 'D'), examined the two (2) plastic bags (Ibid., id) and signaled his companions to approach him. PO2 Juan introduced himself as a police officer (Ibid., 13) and tried to arrest appellant Chen Tiz Chang who, after Juan took hold of him, resisted (Ibid., 13-14). Appellant Chen Tiz Chang was able to free himself from PO2 Juan and ran towards a nearby car about five (5) meters away from where the buy-bust operation took place, and passed the suitcase containing the buy-bust money to an unidentified person on board (Ibid., 14). Then, the car sped away with the buy-bust money (Ibid., id; TSN, April 8, 1997, p. 7). Due to Chen Tiz Chang's attempt to evade arrest (TSN, December 18, 1996, p. 14) a commotion ensued prompting the three (3) other members of the team to respond in order to assist PO2 Juan in subduing Chen Tiz Chang (TSN, April 8, 1997, p. 7,16). The three (3) other police officers who were positioned about 5 to 10 meters away (TSN, December 18, 1996, p. 13), after announcing themselves as police officers (TSN, December 16, 1996, pp. 8-9), helped PO2 Juan in affecting the arrest of Chen Tiz Chang by handcuffing him (TSN, December 18, 1998, p. 14). The police officers could not pursue the person [i]n the vehicle with the buy-bust money, because the team was only composed of four members (TSN, December 18, 1998, p. 15) and between the money and the shabu recovered from appellants, the police officers chose to ensure the custody of the shabu which would be used as evidence against appellant (TSN, April 8, 1997, p. 18). PO2 Juan observed that the unidentified person who fled with the buy-bust money was already at the parking area when the members of the Task Force Spider arrived for the buy-bust operation (TSN, December 18, 1998, p. 15). As PO2 Juan and SPO2 Camacho took Chen Tiz Chang to the Feroza, the other members of the team, namely, SPO2 Bernardito Lagdameo and PO2 Jose Bernardito Jr., were posted by the Feroza to guard the other passenger, appellant Chen Jung San, who himself had been arrested (TSN, December 18, 1996, 15). The police officers searched the Feroza and found underneath the driver's seat another plastic bag containing shabu weighing 943.5 grams [Exhibit 'G'] (Ibid., 16). Whereupon, appellants, the seized shabu and the Feroza were brought to the office of the Task Force Spider (Ibid., 17) for investigation. The team turned over appellants to SPO2 Lagdameo. Then, the police officers executed a Joint Affidavit of Apprehension (Exhibits 'K' to 'K2') and prepared the routine Booking Sheet Information Sheet and Arrest Report (Exhibits 'M' to 'M-1' and 'N' to 'N-1'). The following day they prepared the corresponding letter to the NBI requesting examination of the shabu they had recovered (Exhibits 'E', 'F' and 'G').

"Aida Pascual, Forensic Chemist in the Forensic Chemistry Division of the National Bureau of Investigation, testified that on November 1, 1996, at 1:10 p.m., she received from the Task Force Spider headed by Police Superintendent Purisima a letter request dated November 1, 1996, (Exhibit 'B', 'B-1', TSN, December 9, 1996, pp. 9-10) with [the] stamp mark of the Forensic Chemistry Division indicating that the following specimens had been received for examination (Ibid., 9-11): two (2) kilos of white crystalline substance placed in

transparent plastic packs marked CTC-1, (Exhibit 'E') to CTC-2 (Exhibit 'F'), and approximately one (1) kilo of white crystalline substance suspected to be shabu contained in one (1) transparent plastic pack marked CJS (Exhibit 'G') placed in a black bag (Exhibit 'D') (Ibid., 13) which was in turn wrapped and sealed in an improvised brown bag with the markings DD-96-5012, DD-96-5013 re: Chen Tiz Chang; Chen Jung San; 11/1/96 (Ibid., 11). The letter request was delivered to the NBI by PO2 Jose Bernardino, Jr. (Exhibit 'B-2').

"Aida Pascual weighed each of the specimens and recorded them as follows: Exhibit 'E'-971.7 grams; Exhibit 'F'-1,046 grams, Exhibit 'G'-.943.5 grams (Ibid., 16), all of which were subjected to chemical and chromatographic examination by extracting representative samples from each specimen and spotting it on a chromatographic plate (Ibid., 17), and then comparing it with the chromatographic plate spotted with a known methamphetamine hydrochloride (Ibid., 32). On the same date, she issued her Certification (Exhibits 'H' to 'H-2') detailing her findings on the specimens which were found positive for methamphetamine hydrochloride, a regulated drug. On November 6, 1996, she issued Dangerous Drugs Report No. Dd-96-5012 (Exhibit 'I' to 'I-4'; Ibid., 21) indicating therein her findings that the substance contained in the two (2) transparent plastic bags with a total weight of 2,017.7 grams (Exhibits 'E' and 'F') and respectively marked as CTC-1 and CTC-2 were found positive for methamphetamine hydrochloride, a regulated drug. She also issued Dangerous Drugs Report No. DD-96-5013 (Exhibits 'J' to 'J-4') where she indicated that the substance found in the transparent plastic bag marked as CJS (Exhibit 'G') which weighed 943.5 grams was positive for methamphetamine hydrochloride." [15]

The Defense's Version

On the other hand, the appellants [16] narrated the facts in this manner:

"The cases at bar involve the much talked about and most commonly utilized method of apprehending alleged drug users and pushers by the law enforcing personalities, the so-called 'buy-bust' operation.

"Accused-appellant Chen Tiz Chang is a Taiwanese businessman engaged in the manufacture of watches and in the export and import of rattan products and seafoods. Sometime in October, 1996, he came to the Philippines from Taiwan, for a business venture and x x x he was to charter an airplane together with his business associates from Manila to Marshall Islands for the purpose of looking for supplies of seafoods to be shipped to Japan and Taiwan. In support of these claims, he presented several documents issued by the government of Taiwan (Exhs. '15' to '21', inclusive of submarkings.)

"The other accused-appellant, Chen Jung San, is a nephew of Chen Tiz Chang, and is likewise in the Philippines to pursue a business of melting scrap coppers and mold[ing] the same into other products like water pipes. He started this business in 1993 in association with some business partners but did not register his outfit in his name because of his Taiwan citizenship. He was involved [a] great deal with the technical side of his business concerns, the management of the affairs of his business being undertaken by his other partners. He had his company situs at Sta. Rosa, Marilao, Bulacan. He is married to a Filipina [with] the name of Ma. Luisa Santos with whom he has a son and was living with her in Caloocan City up to the time of his arrest.

"On October 30, 1996 at 11:00 a.m., the two accused-appellants went to the Maalikaya Health Complex along Quezon Avenue, Quezon City on board a Feroza car which was borrowed from a friend of accused-appellant Chen Jung San. They were to have lunch with a friend of Chen Tiz Chang, a certain Mr. Chua, who was at the nearby Mayflower restaurant along Timog Avenue, Quezon City. Said Mr. Chua called up accused-appellant Chen Tiz Chang advising him to wait for him for a while. It was while waiting for the arrival of Mr. Chua at the parking lot of Maalikaya Health Complex that three (3) unidentified males suddenly arrived and poked their guns at the two accused-appellants. With nary a word, both accused-appellant[s] were handcuffed and were forced to board a vehicle en route to the Anito Lodge along EDSA.

"While they were held in captivity inside the motel, some of the valuables of the accused-appellants were taken by their captors like an 18-karat gold Rolex watch studded with diamonds worth P3,000,000.00 belonging to

accused-appellant Chen Tiz Chang, a cell-phone of Chen Jung San, and some cash. Whereupon, these supposed arresting officers demanded P20,000,000.00 from the two accused-appellants in exchange for their freedom, with the threat that should they fail, they [would] pursue the charges against them.

"In the afternoon of the following day, at about 4:00 p.m., after their plea for release was refused and their inability to produce the demanded amount became more real, they were brought to the office of the Task Force Spider where they were ordered not to talk to anybody, and if someone would ever ask what [was] their business in that office, they would just say, 'to visit a friend'. Chen Tiz Chang was then ordered by these 'officers' to call up his wife in Taiwan or anybody who could put up the necessary amount demanded by the men of Task Force Spider to buy their freedom. But because the two accused-appellants could not really come up with the demanded amount, they were told that they [would] be charged for violation of the Dangerous Drugs law and were thereupon brought to a room where several media men with cameras feasted on them.

"Thus, the two helpless and ill-fated accused were finally charged and brought to court to answer the charges they ha[d] never probably dreamt of committing." [17]

The Trial Court's Ruling

In convicting appellants, the trial court relied on the testimonies of PO2 Hilarion Juan and SPO2 Jesus Camacho. It dismissed the inconsistencies in their testimonies as trivial. It likewise excused the non-presentation in court of the buy-bust money, which was not indispensable to the prosecution of the case. Upholding the prosecution, the lower court explained as follows:

"Culled from the evidence, the Court rules that the prosecution was able to prove the guilt of the accused beyond reasonable doubt.

"The prosecution witnesses, specifically PO2 Hilarion Juan, categorically and candidly related to the Court [the] circumstances that led to the buy-bust operation involving the two (2) accused. Al[though] it may appear surprising that the P700,000.00 buy-bust money was never recovered as the same was allegedly taken away by another person riding in another vehicle, the same does not in [any way] affect the credibility of PO2 Juan. Persons in illegal drug activities, in view of the risk and the large amount of money involved, now adopt ways and means in order to ensure a successful operation and protect the buy money. It is not, therefore, surprising for drug pushers to employ other persons (not usually known to would be buyers) who are tasked to protect the buy-bust money in case something wrong might take place during the sale, like in these cases where the accused were apprehended. In fact, newspaper accounts show that drug pushers, although already behind bars, are still able to continue to ply their wares inside the detention cells with the use of cellular phones and even computers.

x x x x x x x x

"Furthermore, the non-presentation of the buy-bust money does not in any way prejudice the cause of the prosecution. In a catena of cases, the Honorable Supreme Court has ruled that the non-presentation of the buy-bust money is not indispensable in the offense of 'Drug Pushing' as long as there is actual delivery of the drugs, as what happened in these cases. x x x

x x x x x x x x

"The Court is not likewise persuaded that the inconsistencies in the testimony of the prosecution's principal witness, PO2 Hilarion Juan, cast doubt on his credibility. For, if indeed there were inconsistencies, the same refer to trivial matters not sufficient to tarnish the credibility of his testimony; in fact, they serve to strengthen the credibility of his testimony. x x x

x x x x x x x x

"The seeming contradiction between the testimony of PO2 Hilarion Juan that accused Chen Tiz Chang was the one who delivered the shabu and accused Chen Jung San remained in the vehicle and the testimony of PO2 Jesus Camacho that it was accused Chan Tiz Chang who remained in the vehicle and accused Chen Jung San was the one who delivered the stuff, does not substantially affect the credibility of PO2 Juan, the pos[eu]r-buyer. Except for this inconsistency, all the other material and substantial testimonies of these two (2) witnesses corroborate each other. Hence, the above-stated statements of the two (2) prosecution witnesses should not be considered to impair the credibility of each other's testimony considering that their testimonies are identical in all other aspects and they establish the essential requirements/elements of the offenses with the two (2) accused participating in the commission of the offenses.

x x x x x x x x

"The defense of denial of the accused cannot prevail over the positive assertions of the prosecution witnesses, as denial is a self-serving negative evidence.

x x x x x x x x

"The contention of the accused that their arrest was made on October 30, 1996 and not on October 31, 1996 is preposterous and a last futile attempt to convince the Court that the prosecution witnesses cannot be believed. A telephone call thru the cellular phone of accused Chen Jung San on October 30, 1996 as appearing in the billing statement (Exhs. '2' & '2-A') of said cellular phone is not a conclusive evidence that the accused were actually arrested on October 30, 1996. For all we know, accused Chen Jung San himself made the call on October 30, 1996, when he was not yet arrested, [to] somebody in the office of the Task Force Spider. It is no longer unnatural for those involved in illegal drug activities to have friends within and outside police establishments. Moreover, the accused could have asked for the issuance of a subpoena ad testificandum on this Filosopo to compel him to testify and support the claim of both accused that he was one of the arresting officers [to] whom some of the calls were made on October 30, 1996, as appearing on the said [billing].

"It is interesting to note that the accused Chen Jung San, as admitted by him, has been using different names while in the country, thus inviting reasonable suspicion that he did so for ulterior motive. If this accused, a Taiwanese citizen, who was afforded the privilege of staying in the country to engage in business, can openly or brazenly disregard our laws pertaining to the use of several names, it is not far-fetched for him to commit other violation[s] of Philippine laws and hide his true identity by the mere expedient of using several names like Chen Jung San, Willy Tan, Chan Bim Seng and Philip Chan or Philip Chen.

"The argument of the accused that the Task Force Spider has been involved in anomalies involving the arrest of Chinese nationals which appeared in the Philippine Star (Exh. '27') is puerile considering that no other evidence was offered to substantiate said claim. And, finally, the argument that the allegations in the Affidavit of Apprehension in these cases (Exhs. 'K' to 'K-2') are identical to that of the allegations in the Affidavit of Apprehension involving another Chinese national (Exh. '1') does not necessarily mean that the allegations in both affidavits are not true.

"It is an accepted practice in police buy-bust operations that the manners of their conduct are almost always identical. To argue, therefore, that similarity in operation in two different buy-bust operations is an indicium of falsehood is a mere speculation or conjecture which can not provide basis for the exculpation of the accused from liability." [18]

Assignment of Errors

In their first Brief, appellants attribute to the trial court the following alleged errors:

"I

The lower court erred in finding that the prosecution was able to prove the guilt of the accused beyond

reasonable doubt

II

The lower court erred in its appreciation of evidence leading to the conviction of the accused given the gross inconsistencies and stark incredibility of the prosecution's witnesses

III

The lower court erred in holding that the accused conspired and confederated in selling and possessing several grams of shabu

IV

The lower court erred in not at all affording the testimonies of the accused the slightest of probative weight not only to demonstrate their innocence but more importantly, to invariably show that theirs was a simple case of kidnap and extortion"[19]

On the other hand, their second Brief cites this sole error for our consideration:

"The verdict of guilty against appellants is a legal error in that the prosecution's evidence failed to establish the required quantum of proof beyond reasonable doubt to overthrow the constitutional presumption of innocence in appellant's favor."[20]

In resolving this appeal, the Court will discuss two main questions: (1) the sufficiency of the prosecution evidence and (2) the merits of the huliadap defense.

The Court's Ruling

The appeal has no merit.

Main Issue:

Sufficiency of Prosecution's Evidence

In *People v. Cheng Ho Chua*, a case with facts similar to the present one, we disposed of the appeal in this wise:

"It is an established rule that the findings of the trial court on the credibility of witnesses and their testimonies are accorded great respect, unless the court a quo overlooked substantial facts and circumstances which if considered, would materially affect the result of the case. Here, we see no reason to depart from the general rule."[21]

In the present case, the appellants have not convinced us to exempt them from the general rule.

Proven Elements of the Crimes

In every prosecution, the guilt of the accused has to be established invariably by proof beyond reasonable doubt.[22] The elements of the crime must be shown to exist and be adequately proven. As we stated in *People v. Boco*,[23] what is "material to a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence."

On the other hand, in a prosecution for illegal possession of dangerous drugs, it must be shown that (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug, (2) such possession is not authorized by law and (3) the accused freely and consciously possessed the said drug.[24]

Here, as in *Boco*, the prosecution witnesses were able to establish these elements. PO2 Hilarion Juan, the designated poseur-buyer in the entrapment operation, testified in this manner:

"Q

Mr. Witness, sometime on October 31, 1996, do you remember where were you?

A

Yes sir.

Q

Where were you on that particular date, Mr. Witness?

A

I was at the office of Task Force Spider proceeding to Maalikaya parking area, sir.

Q

What particular time were you at your office, if you know[,] on the said date?

A

7:00 in the morning, sir.

Q

While thereat, what did you do if any?

A

There was a briefing, sir.

Q

And what was this briefing all about?

A

Regarding a buy bust operation that we [would] conduct, sir.

Q

Will you kindly elaborate [on] this buy bust operation that you [were] going to conduct?

A

Regarding a drug deal, sir.

Q

What was this drug deal all about, Mr. Witness?

A

Pertaining to the sale of shabu, sir.

Q

Who conducted the briefing in your office at that time, Mr. Witness?

A

Col. Allan Purisima, sir.

Q

How many attended this briefing conducted by Col. Allan Purisima?

A

We were four, sir.

Q

And who were those four who attended the briefing?

A

PO2 Jesus Camacho, SPO2 Bernardito Lagdameo, PO2 Jose Bernardino, Jr. and myself, sir.

Q

And for how long were you briefed by your Chief, Col. Allan Purisima?

A

More or less 30 minutes, sir.

x x x x x x x x

Q

What did you do after the briefing?

A

We prepared the buy bust money, sir.

Q

How much buy bust money did you prepare?

A

Seven hundred thousand pesos, sir.

Q

In what denominations [was] this seven hundred thousand pesos, Mr. Witness?

A

There were 100 and 500 peso bills and photocopied money, sir.

Q

After preparing [the] seven hundred thousand pesos genuine money and some photocopied money, what did you do next, if any?

A

We proceeded [to] the area at Maalikaya, Quezon City, sir.

Q

Who were supposed to be the subject[s] in that drug sale?

A

Chinese nationals, sir.

Q

How many Chinese nationals x x x were supposed to be the subject[s] of the drug sale?

A

They were actually two Chinese nationals, sir.

Q

Now, of your group, who acted as the poseur buyer?

A

Me, sir.

COURT: (to the witness)

Q

What happened during the briefing that was conducted, what did you talk x x x about in the briefing?

A

I [would] act as the poseur-buyer and my three companions [would] be positioned a little bit far from my place, Your Honor.

Q

How were you able to know the subjects in that drug operation?

A

With the help of our informant, we were told that they were Chinese nationals, Your Honor.

Q

Where [was] that informant during the briefing [--] you only mentioned four of you who attended the briefing?

A

He went ahead to the area, Your Honor.

PROS: (to the witness)

Q

Did you actually go to the place as agreed upon which [was] Maalikaya Health Palace located at Quezon Avenue, Quezon City?

A

Yes sir.

Q

What time did you reach the place coming from your office at Taguig, Metro Manila?

A

We were there at about 11:00 in the morning of October 31, 1996, sir.

Q

And when you arrived there at around 11:00 in the morning, what transpired next if any?

A

After 30 minutes a Feroza type vehicle colored red arrived, sir.

Q

And when this red Feroza vehicle arrived at the place agreed upon, what happened next if any?

A

I was with the informant and I was introduced to the persons on board the Feroza vehicle, sir.

x x x x x x x x

PROS: (to the witness)

Q

How many persons rode on this red Feroza vehicle, Mr. Witness, when the vehicle arrived in the parking area of Maalikaya Health Palace at Quezon Avenue, Quezon City?

A

There were two sir.

Q

And if you will see these two persons on board the red Feroza vehicle, will you be able to identify them?

A

Yes sir.

Q

Kindly identify them before this Honorable Court, Mr. Witness, if they are inside the courtroom?

A

(witness pointed to the two male persons wearing yellow t-shirt. The smaller one when asked x x x his name answered x x x Chen Jung San and the taller one when asked x x x his name answered x x x Chen Tiz Chang)

ATTY. IFURUNG: (to the Court)

I would like to make it of record that the two persons were wearing the standard yellow t-shirt, so there [was] no difficulty in identifying them.

COURT:

Put that on record.

PROS: (to the witness)

Q

Who was that person, among the two, who talked to you initially at the place of the meeting?

A

He is the one, sir.

(witness pointed to a taller one who when asked x x x his name answered x x x Chen Tiz Chang)

Q

And when the taller one was talking to [you], what was the smaller one doing at that time?

A

He was inside the red Feroza vehicle, sir.

Q

For how long a time, Mr. Witness, did you talk with Chen Tiz Chang?

A

A few moments sir.

Q

How would you estimate [those] few moments in terms of seconds, minutes or hours?

A

Around two minutes, sir.

Q

And what was the subject matter of your conversation if any?

A

Regarding the drug deal, sir.

Q

Particularly what was that drug deal all about?

A

Regarding the sale of shabu, sir.

Q

Who talked first, was it Chen Tiz Chang or you?

A

He was the first, sir.

The informant was talking with Chen Tiz Chang and then afterwards I handed over the black suitcase to Chen Tiz Chang, sir.

COURT: (to the witness)

Q

Why did you hand the black suitcase to Chen Tiz Chang?

A

Because he also handed to me two plastic bags inside the black bag, Your Honor.

PROS: (to the witness)

Q

What did the informant tell you after Chen Tiz Chang talked with him, if any?

A

The informant told me to hand over the money in the black suitcase, sir.

Q

After handing over the money placed in a black suitcase, what transpired next, if any?

A

I got from him two plastic bags which were placed in a black bag, sir.

x x x x x x x x

Q

After the exchanges of the black suitcase and the black bag containing two plastic bags, what transpired next, if any?

A

I got the black bag, opened it and inspect[ed] xxx the two plastic bags, sir.

Q

What did you observe or see if any?

A

I observed that the contents of the two plastic bag[s] were shabu, sir.

Q

After having observed that the contents of the two plastic bags were shabu, what did you do next, if any?

A

I introduced myself as a police officer, sir.

Q

And after introducing yourself as a police officer, what followed next, Mr. Witness?

A

When I got hold of him, he resisted, sir.

Q

To whom were you referring to?

A

The taller one, Chen Tiz Chang, sir.

Q

And you were referring to the same person to whom you ha[d] give the black suitcase containing the seven hundred thousand pesos and alleged[ly] photocopied money?

A

Yes sir.

Q

At the time that you ha[d] these exchanges of suitcases with Chen Tiz Chang up to the time that he resisted when you got hold of him, what were your other companions doing, Mr. Witness?

A

They were positioned near me, sir.

Q

In terms of meters, how far were they from the place where you were then talking with Chen Tiz Chang?

A

Five to ten meters away from us, sir.

Q

When Chen Tiz Chang was resisting, what [were] your three companions doing?

A

They went near me, sir.

Q

And when they went near you, what did they do if any?

A

They helped me in handcuffing the taller one, Chen Tiz Chang, sir.

Q

And where was this smaller one Chen Jung San?

A

Inside the red Feroza car, sir.

Q

What happened to the suitcase that Chen Tiz Chang was holding when you handcuffed him?

A

When I introduced myself as a policeman and he resisted, there was a car near his place and he gave the suitcase to the person inside the car, sir.

Q

How far was this car in relation [to] where you were then transacting the buy bust operation with Chen Tiz Chang?

A

Around five meters, sir.

Q

Where was this person to whom Chen Tiz Chang handed over the suitcase?

A

He was inside the car, sir.

Q

And after this person inside the car got hold of the black suitcase handed to him by Chen Tiz Chang, what did this person [do] if any?

A

The car sped away, sir.

x x x x x x x x

Q

After handcuffing Chen Tiz Chang, what happened next. Mr. Witness, if any?

A

I, together with Sgt. Camacho, brought Chen Tiz Chang to the Feroza jeep, sir.

Q

What did the two other members of your team do at that time, if any?

A

They were guarding the other person inside the red Feroza car [--] I am referring to Chen Jung San, sir. Lagdameo and Bernardino posted themselves near the Foreza jeep where Chen Jung San was seated.

Q

When the person inside the car who sped away with the buy bust money [made his escape], what did you do next, if any?

A

Nothing, we could not run after him, we were only four, sir.

Q

And when you and Camacho brought Chen Tiz Chang to the Feroza vehicle, what happened next after that?

A

We brought them to Task Force Spider, Camp Bagong Diwa, Taguig, Metro Manila, sir.

Q

Before you boarded the vehicle, the red Feroza, what did you do, if any?

A

I searched the red Feroza vehicle, sir.

Q

What did you find if any?

A

I found a plastic bag which was placed under the driver's seat containing suspected shabu, sir.

ATTY. IFURUNG (to the Court)

We would like to delete the word in his answer 'suspected shabu'[:] that means he is not even sure if it [was] shabu or not. He is not an expert.

COURT:

That is his answer, let it remain in the records.

PROS: (to the witness)

Q

And what did you do with this stuff that you found under the driver's seat?

A

I brought along the plastic bag to be forwarded to the NBI, sir."[25]

The foregoing testimony was corroborated on material points by SPO2 Jesus Camacho.[26] Aida Pascual, a forensic chemist, confirmed that the suspected regulated drugs seized from the appellants were indeed methamphetamine hydrochloride or shabu. She declared in open court:

"PROS. SOLLER:

(to the Witness)

Q

After Exhibits E, F and G were turned over to you by officer Bernardino, what did you do next, Madam Witness, if any?

A

I took the net weight of each specimen, Sir.

Q

And what [was] the net weight of Exhibit E, Madam Witness, after conducting this weighing?

A

971.7 grams, sir.

Q

And how about Exhibit F, do kindly tell this Court what [was] the weight of this after conducting this weighing, Madam Witness?

A

1,046 grams, sir.

Q

And likewise, Exhibit G, please tell us?

A

943.5 grams, sir.

Q

After weighing Exhibit E, F and G what did you do next, if any?

A

I conducted a laboratory examination o[f] the specimens.

Q

And what kind of examination, Madam Witness, did you conduct on this Exhibits E, F and G?

A

Chemical and Chrom[a]tographic examination, Sir.

Q

In a layman's language, would you kindly explain to us what do you mean by "chemical and chrom[a]tographic examination" that you conducted?

A

In Chemical Examination, I did the color test.

Q

How about the Chrom[a]tographic?

A

The Chrom[a]tographic Examination, I extracted representative sample from each specimen and then spot[ted] it on the chrom[a]tographic plate together with the standard methamphetamine Hydrochloride and then develop[ed] it into a solvent and then I sprayed [it] with Ra test after one hour.

Q

And after conducting this examination, what was the result, Madam Witness?

A

The specimen gave positive result for methamphetamine hydrochloride, sir."[27]

That only samples from the captured substance were examined by the chemist does not weaken the prosecution case. In *People v. Tang Wai Lan*,[28] the Court held:

"A sample taken from one (1) of the packages is logically presumed to be representative of the entire contents of the package unless proven otherwise by accused-appellant. Therefore, a positive result for the presence of drugs is indicative that there is 1.1 kilogram of drugs in the plastic package from which the sample was taken."

We are not persuaded by the argument that the samples examined were not taken from the drugs seized. On the contrary, the testimonies of all the prosecution witnesses fairly established that the shabu taken from the appellants is the same substance examined by the forensic chemist and later presented as evidence in court. Verily, the presumption of regularity must prevail over appellants' unfounded allegations and speculations.[29]

Appellants' behavior during the entrapment showed that there was conspiracy between them and a third person who got away with the buy-bust money. It is an established rule that direct proof is not essential to establish conspiracy, as it may be inferred from the acts of the accused before, during and after the commission of the crime, all of which indubitably point to or indicate a joint purpose, a concert of action and a community of interest.[30]

The prosecution established beyond reasonable doubt all the elements of the crime and, consequently, appellants' guilt. As a result of a valid buy-bust operation,[31] appellants were caught in flagrante selling two packs of shabu to the poseur-buyer. As a consequence of a search incident to a lawful arrest, a third pack also containing shabu was likewise found inside their vehicle. Moreover, the substance seized from them was confirmed to be shabu.

Alleged Inconsistencies

Appellants enumerate certain inconsistencies in the testimonies of prosecution witnesses that supposedly manifested lack of credibility: the alleged discrepancies regarding the source of information of their alleged illegal activities, the failure to present the informant, the surveillance conducted, the buy-bust money, the members of the buy-bust team and the time of the team's arrival at the Maalikaya Health Palace.

We agree with the trial court, however, that most of these points refer to trivial matters that have no bearing on the elements of the crime. First, these are peripheral matters that do not detract from what has been established by the evidence for the prosecution. Hence, we have consistently held that the prior surveillance of the suspected offender[32] and the presentation of the informant[33] and the buy-bust money[34] are not indispensable to the prosecution of drug cases.

Second, the records show that the alleged inconsistencies as to the source of information and the time of the team's arrival at the place of arrest were supplied by the appellants rather than implied from the prosecution witnesses' testimonies. Likewise, we find no merit in appellants' argument regarding the surveillance, the informant and the buy-bust money. We observe that SPO2 Jesus Bernal Camacho failed to mention the existence of the informant and the buy-bust money,[35] but he did not deny their presence either. In like manner, he did not state that PO2 Hilarion Juan never conducted a surveillance of the appellants.

To secure a reversal of the appealed judgment, the inconsistencies should have pertained to the actual buy-bust itself -- that crucial moment when the appellants were caught selling or in possession of shabu -- not to peripheral matters. On this point, appellants stress that the two police officers, who conducted the buy-bust operation, narrated two conflicting tales, as allegedly shown by the following:

1. Camacho claimed that Chen Jung San left the place for around thirty minutes while Chen Tiz Chang was

conversing with the poseur-buyer; Juan did not mention this.

2. According to Camacho, it was Appellant Chen Jung San who handed the two packs of shabu to Juan; Juan said that it was Chen Tiz Chang who had done so.

3. Juan claimed that the informant was with him during the exchange; Camacho never mentioned this informant.

4. Juan testified that after the exchange, when he and Camacho introduced themselves as police officers, Chen Tiz Chang resisted arrest and managed to pass on to a third person the "boodle" money; Camacho merely claimed that he and Juan had invited the appellants, but did not mention any third person getting away with the loot.

5. Lastly, Juan stated that they discovered a third pack of shabu under a seat of the vehicle used by appellants; Camacho did not mention the existence of this third pack.

As the trial court correctly pointed out, Camacho acted merely as a back-up to Juan. This explains why the account of Camacho was rather hazy compared to the unclouded narration of Juan. Unlike the poseur-buyer who had direct contact with the appellants during the entrapment, Camacho was standing about ten to fifteen meters away from the scene and was thus hindered in his appreciation of the incident. Furthermore, his attention was divided between watching Chen Tiz Chang with the poseur-buyer and keeping an eye on Chen Jung San. We must stress that the assessment of the credibility of the two prosecution witness is best left to the discretion of the trial judge, who had observed their demeanor, conduct and manner.[36]

In *People v. Salinas*,[37] we held:

"The alleged contradictions and inconsistencies are, in the main, minor and immaterial since the sale of the regulated drug was clearly and categorically established by the testimony of the poseur-buyer, PO2 Benito Basilio, Jr. The testimony of SPO3 Ely Ramos regarding the sale of 'shabu' by the accused Rodolfo Salinas to PO2 Basilio cannot be expected to be as detailed and as accurate as the latter's account because it was only Basilio who actually approached and transacted with Salinas while SPO3 Ely Ramos stayed some distance away and strategically positioned himself so he could see Basilio make the pre-arranged signal for the arrest of Salinas. The minor inconsistencies as to the details of the sale of 'shabu' may be considered as badges of truth rather than of falsehood."

In view of all the foregoing, we find that appellants failed to overthrow the presumption of regularity accorded the police officers in the performance of their official duty.[38]

Second Issue:

Defense of Hulidap

As adverted to at the beginning of this ponencia, appellants raise the defense of frame-up or hulidap.

We expressed our disdain for the hackneyed defense of hulidap in *People v. Cheng Ho Chua*,[39] in which we said:

"Courts generally view with disfavor this defense commonly raised in drug cases, for it is easy to concoct and difficult to prove. Moreover, there is a presumption that public officers, including the arresting officers, regularly perform their official duties. In the present case, the defense failed to overcome this presumption or to present clear and convincing evidence to prove 'hulidap.'"

In the present case, we agree with the solicitor general that appellants' defense has not been established. They fail to describe the individuals allegedly responsible for the extortion. As to the phone calls traced to one Myrna Pilosopo and to the office of Task Force Spider, we agree with the People's counsel that these are mere

speculations, since no proof was presented to show any connection between them and the kidnappers. Indeed, appellants merely gave general descriptions of these alleged kidnappers. Moreover, no charges, criminal or administrative, were ever filed against these alleged scalawags. In other words, we find no clear and convincing evidence to support the appellants' allegation.

In closing, we reiterate that the "[i]llegal drug trade is the scourge of society." [40] Equally reprehensible is the police practice of using the law as a tool in extorting money from hapless victims. [41] In this case, however, appellants' theory of extortion was not sufficiently proven.

WHEREFORE, the appeal is DENIED and the appealed Decision AFFIRMED. Costs against appellants.

SO ORDERED.

Melo, (Chairman), Vitug, Purisima, and Gonzaga-Reyes, JJ., concur.

[1] The alias was supplied by the investigating officers.

[2] Penned by Judge Diosdado Madarang Peralta; records, pp. 136-146.

[3] The popular term for methamphetamine hydrochloride.

[4] Decision, pp. 10-11; rollo, pp. 40-41; records, pp. 145-146.

[5] By Assistant City Prosecutor Ma. Teresa E. De Guzman.

[6] Rollo, p. 7; records, p. 1.

[7] Rollo, p. 9; records, p. 3.

[8] Assisted by Counsel de Parte Nestor Ifurung.

[9] See Certificate of Arraignment, records, p. 22; and the lower court's Order dated November 12, 1996, records, p. 25.

[10] Records, pp. 52-55.

[11] Records, pp. 98-101.

[12] Records, p. 84.

[13] This case was deemed submitted for resolution on September 16, 1999, when the Court received the Appellee's Brief. The filing of a reply brief was deemed waived, as none was submitted within the reglementary period.

[14] Signed by Assistant Solicitor General Carlos N. Ortega, Mariano M. Martinez and Associate Solicitor Marina F. Duran-Macaraig.

[15] Appellee's Brief, pp. 7-14; rollo, pp. 229-236.

[16] Two Briefs were submitted for both appellants, one (the first Brief) by Atty. Juanito F. Antonio and the other (the second Brief) by Atty. Mario G. Aglipay. Both Briefs were considered by the Court, per *People v. Boco and Inocentes*, GR No. 129676, June 23, 1999.

[17] First Brief, pp. 4-6; rollo, pp. 68-70.

[18] Decision, pp. 5-9; rollo, pp. 140-144.

[19] First Brief, p. 1; rollo, p. 65.

[20] Second Brief, pp.3-4; rollo, pp. 105-106.

[21] GR No. 127542, March 18, 1999, pp. 8-9. See also *People v. Perez*, GR No. 130501, September 2, 1999; *People v. Jaberto*, GR No. 128147, May 12, 1999; *People v. Sumbillo*, 271 SCRA 428, April 18, 1997; *People v. Quinao*, 269 SCRA 495, March 13, 1997; *People v. Nuestro*, 240 SCRA 221, January 18, 1995.

[22] *People v. De los Santos*, GR No. 126988, September 14, 1999.

[23] GR No. 129676, p.14, June 23, 1999. citing *People v. Castro*, 274 SCRA 115, June 19, 1997 and *People v. Salazar*, 266 SCRA 607, January 27, 1997. See also *People v. Requiz*, GR No. 130922, November 19, 1999.

[24] *People v. Khor*, GR No. 126391, May 19, 1999, citing *Manalili v. CA*, 280 SCRA 400, October 9, 1997.

[25] TSN, December 18, 1996, pp. 4-16; records, pp. 66-78.

[26] TSN, December 16, 1996, pp. 3-10; records, pp. 47-54.

[27] TSN, December 9, 1996, pp. 16-17; records, pp. 16-17.

[28] 271 SCRA 24, 33, July 23, 1997, per Padilla, J.

[29] See *People v. Sy Bing Yok*, GR No. 121345, June 23, 1999.

[30] *People v. Boco*, GR No. 129676, June 23, 1999, p. 23.

[31] In *People v. Boco*, *ibid.*, p. 25, we said:

"A buy-bust operation is a form of entrapment, which in recent years has been accepted as a valid means of arresting violators of the Dangerous Drugs Law. It is commonly employed by police officers as an effective way of apprehending law offenders in the act of committing a crime." See also *People v. Requiz*, *supra*.

[32] In *People v. Ganguso* (250 SCRA 268, 278-279, November 23, 1995, per Davide, Jr., J. [now CJ]), the Court held:

"xxx [P]rior surveillance is not a prerequisite for the validity of an entrapment operation especially when the buy-bust team members were accompanied to the scene by their informant." (Footnotes omitted)

See also *People v. Lachanes*, 270 SCRA 193, March 20, 1997.

[33] *People v. Cheng Ho Chua*, GR No. 127542, March 18, 1999; *People v. Khor*, GR No. 126391, May 19, 1999; *People v. Boco*, GR No. 129676, June 23, 1999.

[34] *People v. Khor*, *supra*; *People v. Boco*, *supra*.

[35] TSN, December 16, 1996, pp. 1-18; records, pp. 45-62.

[36] *People v. Ferrer*, 255 SCRA 19, March 14, 1996; *People v. Lua*, 256 SCRA 539, April 26, 1996.

[37] 228 SCRA 45, 50, November 18, 1993, per Padilla, J.

[38] *People v. Khor*, *supra*; *People v. Requiz*, GR No. 130922, November 19, 1999.

[39] *Supra*, p. 19. See also *People v. Sy Bing Yok*, GR No. 121345, June 23, 1999; *People v. Boco*, *supra*; *People v. Nicolas*, *supra*.

[40] People v. Requiz, GR No. 130922, November 19, 1999, p. 13, per Bellosillo, J.

[41] See People v. De los Santos, GR No. 126998, September 14, 1999.

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