

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. JESUS G. BATOCTOY, EDUARDO P. VERGARA, JAIME B. PONCE, RICARDO F. GARCIA, AND SPO1 RODOLFO C. REGACHO, APPELLANTS.

G.R. Nos. 137458-59. April 24, 2003

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

On automatic review is the decision,[1] dated December 11, 1998, of the Regional Trial Court (RTC) of Pasay City, Branch 114, sentencing appellant SPO1 Rodolfo C. Regacho to death for selling, delivering, and possessing methamphetamine hydrochloride or “shabu,” in violation of Section 15[2] and 16,[3] Article III, of the Dangerous Drugs Act. The trial court also penalized his co-accused, namely, appellants Jesus G. Batocoy, Eduardo P. Vergara, Jaime B. Ponce, and Ricardo F. Garcia with reclusion perpetua for being Regacho’s co-principals in the commission of the said offenses.

The instant cases stemmed from two (2) charge sheets filed by the State Prosecutor of the Department of Justice (DOJ) against herein appellants for two (2) counts of violation of R.A. No. 6425, as amended by R.A. No. 7659.[4]

In Criminal Case No. 97-0123, the information states as follows:

That on or about the 9th day of March, 1997, in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized to sell any regulated drug, conspiring, confederating and helping one another, did then and there willfully, unlawfully and feloniously sell methamphetamine hydrochloride, otherwise known as “shabu” with an approximate weight of 243.9456 grams, a regulated drug, in violation of the above-cited law.

CONTRARY TO LAW.[5]

In Criminal Case No. 97-0124, the information reads thus:

That on or about the 9th day of March, 1997, in Pasay City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused not being lawfully authorized to possess or use any regulated drug, conspiring, confederating and helping one another, did then and there willfully, unlawfully and knowingly have in their possession methamphetamine hydrochloride, otherwise known as “shabu” with an approximate weight of 10.8758 grams, a regulated drug, in violation of the above-cited law.

CONTRARY TO LAW.[6]

When arraigned in both cases, all the accused pleaded not guilty. Thereafter, a joint trial ensued with the prosecution presenting four (4) witnesses, namely, National Bureau of Investigation (NBI) Special Investigator Pio Palencia, Intelligence Agent Martin Soriano, Forensic Chemist Edwin Purificando, and Longwood Hotel manager Ernesto Belen.

Special Investigator PIO PALENCIA testified that on March 8, 1997, he received confidential information that a certain “Rudy” and one “Andrew” were dealing in illegal drugs.[7] Accordingly, the NBI scheduled a “buy-bust” operation for 10 a.m. of March 9, 1997 at the Winston Hotel in Ermita, Manila. He then had ten (10) P100 bills dusted with fluorescent powder as the marked money in the entrapment. He was to be the poseur-buyer, while his fellow NBI Agents Martin Soriano and Allan Santiago would back him up.

The team then proceeded to the hotel, where they rented two rooms – one for the NBI agents and the other for the informants who had instructions to persuade “Rudy” to deliver the dangerous drugs at said hotel rooms.[8]

Even the best-laid plans can go awry, however, and in this instance, it did, for “Rudy” and “Andrew” told the informers that the drugs would be delivered at Room No.12 of Longwood Hotel in Harrison Boulevard, Pasay City and not at the Winston Hotel in Manila. Without additional planning, the law enforcers and an informant proceeded to Longwood Hotel.

At the anteroom of Longwood Hotel’s Room No. 12, the informer introduced Palencia to a certain “Ric.” The latter asked for the cash, so Palencia handed him the bag containing bundles of money, including the marked bills. “Ric” then entered Room 12 and Palencia told the informer to advise the back-up team of this development. After 20 or so minutes, one “Rudy,” who was later identified as SPO1 Regacho, came out carrying a newspaper-wrapped package. The package contained a transparent plastic bag filled with a white crystalline substance. Palencia then discreetly pressed the radio transceiver, which he had concealed under his clothing to alert Soriano and Santiago that the deal was done. He immediately collared “Rudy” and announced a raid. Moments later, Soriano and Santiago arrived and barged inside Room No. 12 where they found the appellants Batoctoy, Vergara, Garcia, and Jaime Ponce, counting money on the bed. The law enforcers arrested all four. A search of the premises led to the recovery of four (4) plastic bags of “shabu” from a trashcan. Along with the packet taken by Palencia from “Rudy,” the team’s haul, thus amounted to five (5) bags of “shabu”, with a total weight of 254.8214 grams, to wit:

Bag marked

PMP –

1-----

4. 5539 grams

“

“

PMP –

2-----

4.5102 grams

“

“

PMP –

3-----

0.7121 grams

“

“

PMP –

4-----

1.0996 grams

10.8758

“

“

PMP – 5(subject of “buy-bust” transaction)--

243.9456 grams

Total:

254.8214 grams[9]

The NBI team brought the appellants and the confiscated drugs to the NBI Forensic Chemistry Laboratory for examination. The tests revealed the appellants’ hands to be positive for fluorescent powder, while the confiscated substance was determined to contain methamphetamine hydrochloride or “shabu.” Agents Palencia and Soriano then executed their joint affidavit of arrest.[10]

NBI Forensic Chemist EDWIN PURIFICANDO testified that the ultraviolet examination of the dorsal and palmar aspects of the left and right hands of the appellants disclosed the presence of yellow fluorescent specks and smudges.[11] He likewise declared that a chemical examination of the white crystalline substance that was confiscated from the appellants yielded a positive result for methamphetamine hydrochloride, a regulated drug.[12]

ERNESTO S. BELEN, officer-in-charge of Longwood Hotel, testified that his investigation of the incident showed that NBI agents arrested hotel guests at Room No. 12 of the hotel.[13]

For the defense, all five appellants took the witness stand. They also presented Jaime Vergara, brother of the appellant Eduardo Vergara, to corroborate the latter’s testimony. The defense dispensed with the testimony of NBI Technician JOSE PALMA of the NBI Dactyloscopy Division after the prosecution stipulated in open court that Palma took the fingerprints of Ric Bergonio and Maria Elena Espina on March 9, 1997 as shown by the arrest and information sheets marked Exhibits “9” & “10”, respectively.

Appellant EDUARDO VERGARA testified that on the morning of March 9, 1997, he contacted Ricardo “Ric” Garcia, a used-car salesman, to inquire if he had a possible buyer for the Suzuki “Fronte” of his brother, Jaime. Ric told him to bring the vehicle to his residence in Makati. Upon arriving at Ric’s house around one o’clock in the afternoon, Ric’s brother-in-law asked Eduardo to go with him at Longwood Hotel in Harrison Street, Pasay City, because the prospective buyer was billeted there.

When they arrived, he had Ric paged at the lobby. He was returning to the vehicle, when suddenly five (5) armed men sporting vests emblazoned with the NBI logo surrounded him. When asked what he was doing there, he answered that he was waiting for Ric. Suddenly, one of the five men, whom he came to know later as agent Palencia, shouted “positive, positive yan!” (“He’s positive, positive”). One of the five men then slapped his face and boxed his stomach. He asked, “Bakit po, sir, anong violation ko?” (“Sir, may I know what’s my violation?”) He got no reply but was instead brought to a parked vehicle, handcuffed, and left behind with a guard while Palencia and two others left for the hotel. They returned to the parking lot with Ric Garcia and Jesus Batotoy in tow. The NBI operatives then went back to the hotel. When they came out, Palencia and the two other operatives had Rodolfo Regacho, Jaime Ponce, and two more persons whom he did not know, with them. He later learned that the duo who were unknown to him were Ric Bergonio and Maria Elena Espina.

The law enforcers then brought the appellants to the NBI headquarters for booking and for laboratory examination. Prior to the examination, agent Martin Soriano shook hands with all of the appellants saying, “Walang personalan, trabaho lang ito.” (“Nothing personal, this is just a job.”) Later, Ric Bergonio and Maria Elena Espina were released and the case against them dropped.

Eduardo averred that during his two-day detention period, agent Soriano demanded P200,000 from him for his release. Soriano later reduced said amount to P100,000. When he could not come up with the money, he and his co-appellants were brought to the DOJ on March 11, 1997 for inquest.[14]

JAIME VERGARA, brother of the appellant Eduardo, corroborated his brother’s testimony. Jaime testified that he was the owner of a Suzuki “Fronte” car, which Eduardo offered for sale to Ricardo Garcia’s client. Jaime identified in court the Deed of Sale in his favor marked as Exhibits “12” & “13.”[15]

SPO1 RODOLFO REGACHO testified that he is an active policeman with the rank of SPO1 and assigned to the Service Group, Eastern Police District, Camp Miguel Ver, Pasig City, and that he was under suspension due to his arrest in the present case. He further testified that early in the morning of March 9, 1997, while resting at home at 522 P. Burgos Street, Mandaluyong City, he received a telephone call from Lolita Zuniga, the sister-in-law of his compadre Antonio Sta. Teresa. Lolita asked for his assistance on behalf of her friend, a certain Allan, allegedly a victim of estafa. She introduced Allan, who related that a certain Andrew Padilla borrowed P200,000 and absconded.

According to Regacho, since he knew Andrew, he agreed to help Allan. He went to Andrew’s house at 728 San Ignacio St., Mandaluyong City. But, he was told that Andrew no longer lived there having already transferred to Longwood Hotel in Harrison, Pasay City. He called Lolita who agreed to accompany him to Longwood Hotel.

At the front desk, he was told that Andrew was staying in Room 12. He called Andrew about Allan’s complaint but Andrew denied it. He then asked if he could go to his room so that he could talk to him personally. Andrew agreed. He instructed Lolita to call Allan.

Regacho declared that when he got into the room, he saw Andrew’s live-in partner, Elena Espina. Then, he and Andrew talked. Moments later, Allan called and said he was coming. Andrew left the room to go to the front desk to get something. There was a knock on the door. When he opened it, a person who introduced himself as Ric Bergonio appeared, looking for Andrew. He told Ric that Andrew was at the front desk. Ric then offered to stay in the ante-room to wait for Andrew.

A few moments passed. Then came another knock on the door. Elena answered the door and two NBI agents appeared. With guns drawn, the two agents dashed into the room and searched it. Regacho testified that Agent Martin Soriano poked at him and cuffed both of his hands at the back while Agent Palencia continued to search

the room. It was apparent they were looking for Erning Aprid, who was not there. Afterwards, the two agents disarmed him of his service firearm and took his wallet containing P5,000, a gold necklace, a bracelet, and four pieces of rings with a total value of P20,000. Afterwards, he was brought to the parking area with Ric Bergonia and Elena Espina and boarded on an NBI vehicle.

Appellant RICARDO GARCIA denied that he was captured in a buy-bust operation on March 9, 1997. He testified that around seven o'clock in the morning of March 9, 1997, he was tending to his store located at 2563-A Cabanellas St., Makati City, when his friend, Jesus Batoctoy (a taxi driver and dealer in used cars) called him by telephone and inquired if he already found a car for sale, which they would also sell. He answered in the negative. Jesus Batoctoy then told him that he was billeted at Room 27 of the Longwood Hotel in case he would look for him. At 9:00 a.m., Eduardo Vergara called him offering to sell a car. He told Eduardo Vergara to bring it to his house for inspection as he had a prospective buyer. He also called Jesus Batoctoy who told him to bring the car to Longwood Hotel. At 10:00 a.m., he left for Longwood Hotel and instructed his brother-in-law to tell Eduardo Vergara, if he arrived, to bring the car to the Longwood Hotel.

When he arrived at the Longwood Hotel, he and Jesus Batoctoy talked about the price of the car. Then, they waited for Eduardo Vergara. At 2:00 p.m., Eduardo Vergara paged them that he (Eduardo) was at the lobby of the hotel waiting for them. He and Jesus Batoctoy went down to the lobby but failed to see Eduardo Vergara. They returned to Room 27. On their way back, four (4) NBI agents called out to them and inquired about a certain Ricky. He told them that his name was Ricardo and his nickname was not Ricky. Thereafter, one of the men shouted "Positive yan, positive yan." They were then herded to a waiting vehicle.

Jesus Batoctoy was turned over to another NBI agent inside the waiting vehicle. He was handcuffed and told to accompany the NBI men to Room 12 where he was ordered to knock. A person, later identified to be Ric Bergonio, greeted them. Almost instantly, the NBI snatched the clutch bag Ric Bergonio was holding then ordered the latter to lie face down on the floor of the ante-room. The NBI also ordered him to lie down and took his wallet containing P14,000 cash.

The NBI then knocked on the inner door and a woman, later identified as Elena Espina, appeared. The NBI dashed into the room and immediately searched the room. Meanwhile, Elena Espina and another occupant of the room, later identified to be SPO1 Rodolfo Regacho, were placed under arrest. Afterwards, Rodolfo Regacho and Elena Espina were ushered into a car.

He and Ric Bergonio were brought to Room 92 where he was asked to knock. A person, whom he later knew to be Jaime Ponce, opened the door. The NBI charged into the room, placed Jaime Ponce under arrest, and searched the room.

All of them were then brought to the NBI Office at Taft Avenue where they were asked to sign a booking sheet. He heard Ric Bergonio try to settle the case. At 9:00 p.m., a companion of Ric Bergonio arrived. Shortly afterwards, Ric Bergonio and Elena Espina were released. He saw a wrapped package—which he believed was money—being given to Pio Palencia, one of the arresting NBI agents. After Ric and Elena Espina's release, he and the others were led to the laboratory. Before they were fingerprinted, Martin Soriano shook hands with them, one by one, and told them "walang personalan ito, trabaho lang" (Nothing personal, we're just doing our job).[16]

The appellants Jesus Batoctoy and Jaime Ponce likewise denied that they were all arrested together in Room 12 of the Longwood Hotel in a buy-bust operation or that any shabu was confiscated from them.

Appellant Jesus Batoctoy corroborated the testimony of Ricardo Garcia as to the events leading to their arrest. He testified that on March 9, 1997, he was at Room 27 of the Longwood Hotel, having spent the night there with a

prostitute. After his female companion had left in the morning, he called Ricardo Garcia asking if the latter had found a used car for sale. Ricardo Garcia told him that he already found a car and that he would bring it to the hotel for viewing. Later, Ricardo arrived and they talked about the price. At 2:00 p.m., a person paged Ricardo telling him that the car was already in the hotel. They went down to the lobby together. They saw the car, but the driver was not there so they decided to return to Room 27. On their way back, four (4) NBI agents stopped them and asked them which one of them was “Ricky.” Ricardo gave them his name but told them that he is known as “Ricardo” not “Ricky.” One of the agents uttered “Positive, positive yan.” Thereupon, they were arrested and brought to a car.

Moments later, the NBI returned with two men and a woman whom they later came to know as Rodolfo Regacho, Ric Bergonio, and Elena Espina. Ricardo Garcia and Ricardo Bergonio were brought back to the hotel by the NBI to Room 92. When they returned, they were with another person, later identified as Jaime Ponce. Later, they were brought to the NBI Office in Taft Avenue where he saw Agent Martin Soriano, Agent Pio Palencia, Ric Bergonio, and Elena Espina talking. Jesus Batoctoy testified that he heard Ric Bergonio offer the two NBI agents P300,000 for his and Elena Espina’s release. The two agents acceded. Ric was allowed to make a phone call. Later on, a person arrived and handed a brown envelope to Agent Pio Palencia and the two (Bergonio and Espina) were allowed to go home.[17]

Appellant Jaime Ponce testified that he came to Manila on March 8, 1997, hoping to visit his brother in Kalookan City. He overslept in the bus he was on and ended in Rizal Avenue, Sta. Cruz, Manila. When he called his brother’s house, he was told that his brother was not yet home so he went to a beerhouse in Ermita, Manila. At 2:30 a.m. of March 9, 1997, he checked in at the Longwood Hotel in Room 92 with a prostitute. At 2:00 p.m. after his female companion had left, he heard a knock at the door. He opened it and saw two NBI agents who suddenly barged in and choked him. One of the agents told him, “Ilabas mo na” (Give it to us). Unable to give anything, he was arrested and handcuffed. The two agents took his wallet containing P15,170 cash and searched the room. They found nothing.[18]

Later, he and six others were brought to the NBI Office at Taft Avenue.

Both Jesus Batoctoy and Jaime Ponce corroborated the testimony of co-appellant Vergara to the effect that Agent Martin Soriano purposely contaminated their hands with fluorescent powder by shaking hands with all of them, all the while saying, “Walang personalan, trabaho lang ito.”

The trial court gave credence to the prosecution evidence and concluded its judgment in this wise:

WHEREFORE, in view of the foregoing, the Court finds the accused Jesus Batoctoy, Ricardo Garcia, Jaime Ponce, SPO1 Rodolfo Regacho and Eduardo Vergara, all GUILTY beyond reasonable doubt, as co-principals, for Violation of Sections 15 and 16, Article III, Republic Act 6425, as amended by Republic Act 7659 and sentences them as follows:

For Criminal Case No. 97-0124:

All to suffer the indeterminate penalty of two (2) years, four months and one (1) day, as minimum, to four (4) years and two (2) months of prision correccional, as maximum.

For Criminal Case No. 97-0123:

Accused Jesus Batoctoy, Ricardo Garcia, Jaime Ponce and Eduardo Vergara to suffer the penalty of reclusion perpetua and to pay each a fine of Five Hundred Thousand (P500,000.00) pesos, and SPO1 Rodolfo Regacho to suffer the aggravated penalty of DEATH being an active member of the Philippine National Police pursuant to Section 24, Republic Act 7659, which amended Republic Act 6425, and to pay a fine of One Million

(P1,000,000.00) pesos.

Considering the imposition of the death penalty on one of the accused, let the entire records of this case be forwarded to the Supreme Court for automatic review and judgment within twenty (20) days but not earlier than fifteen days from promulgation of this judgment pursuant to Section 10, Rule 122 of the Revised Rules of Court.

Meanwhile, and pending review, let mittimus order issue in these cases.

SO ORDERED.[19]

Hence, the instant cases before us.

In their brief, the appellants Eduardo Vergara and SPO1 Rodolfo Regacho pray for the reversal of said judgment, based on the following assignment of errors:

I

THE TRIAL COURT ERRED IN CONVICTING ACCUSED-APPELLANTS OF THE CRIMES CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

II

THE TRIAL COURT ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE TESTIMONIES OF PROSECUTION WITNESSES, PIO PALENCIA AND MARTIN SORIANO DESPITE OF MAJOR INCONSISTENCIES AND DISCREPANCIES AFFECTING THEIR CREDIBILITY.

III

THE TRIAL COURT ERRED IN FINDING THE EXISTENCE OF CONSPIRACY.[20]

Appellants Jesus G. Batocoy, Jaime B. Ponce and Ricardo F. Garcia in turn made the following assignment of errors:

I

THE TRIAL COURT GRAVELY ERRED IN APPRECIATING THE TESTIMONIES OF PIO PALENCIA AND MARTIN SORIANO AND IN RELYING MAINLY ON THE PRESUMPTION OF DUTY PERFORMED RATHER THAN THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE OF THE ACCUSED.

II

THE TRIAL COURT LIKEWISE ERRED IN NOT RULING THAT THE BUY-BUST OPERATION AGAINST ACCUSED-APPELLANTS WAS A MERE FRAME-UP AND EXTORTION.

III

THE TRIAL COURT ALSO ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIME CHARGED BY RELYING ON THE WEAKNESS OF THE DEFENSE RATHER THAN ON THE STRENGTH OF THE PROSECUTION EVIDENCE.[21]

Essentially, for resolution is the issue of the sufficiency of the prosecution's evidence to prove the appellants' guilt of the offenses charged beyond reasonable doubt.

The appellants vehemently attack the credibility of the NBI operatives who conducted the "buy-bust" operation. They argue that glaring inconsistencies and obvious discrepancies in the testimonies of Palencia and Soriano show that said operation was nothing but a sham. Palencia's failure to correctly identify the "Ric" he met at the anteroom of Room No. 12 and the inconsistencies in the testimonies of Palencia and Soriano insofar as the

“buy-bust” money is concerned are not innocuous lapses but stem from an obvious desire to pervert the truth, said appellants. They add that the trial court should have disregarded the testimony of prosecution witness Ernesto Belen, as he had no personal knowledge of the incident that happened at the Longwood Hotel on March 9, 1997.

For the appellee, the Office of the Solicitor General, agrees with the findings of the trial court and recommends that the appealed decision be affirmed in toto.[22]

It may be noted that the testimony given for the prosecution and that of the defense are diametrically opposed to each other. In resolving such conflict, dealing as it does with the credibility of the witnesses, the usual rule is for this Court to respect the findings of the trial court as it was in a better position to decide the question, having heard the witnesses themselves and having observed their deportment and manner of testifying during the trial.[23] However, the rule does admit of exceptions, such as when the evaluation was reached arbitrarily or when the trial court overlooked, misunderstood, or misapplied certain facts or circumstances of such weight and substance as to affect the very results of the case.[24] The factual findings of the trial court may be reversed if by the evidence on record or lack of it, it appears that the trial court erred.[25]

In these cases, a close and careful scrutiny of the evidence on record discloses that they fall under the exceptions. In every prosecution for illegal sale of prohibited or regulated drugs, the following elements must be established: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[26] We find that the prosecution’s evidence—consisting chiefly of the testimonies of prosecution witnesses Palencia and Soriano—is so riddled with loopholes and inconsistencies as to create reasonable doubt, rather than moral certainty as to the guilt of appellants.

If the prosecution’s version is to be believed, the alleged sting operation was not an ordinary run-of-the-mill buy-bust operation, but a carefully planned affair in view of the amount of the drugs involved. However, the irregularities in the procedures followed by the NBI operatives, coupled with the inconsistencies in their testimonies, raise serious doubt as to the actual conduct of the “buy-bust” operation.

First, both the testimonial and documentary evidence of the prosecution fail to establish with certainty who was arrested at what time. The booking sheet and arrest information sheet for the appellant Vergara does not indicate the date and the time of his arrest.[27] The same is true for the booking sheets and arrest information sheets for the appellants Batocoy[28] and Garcia.[29] The most lamentable aspect, however, pertains to appellant Regacho’s information sheet, which indicates that he was arrested on March 7, 1997,[30] not March 9, 1997 as claimed by the prosecution. Further, NBI Agent Martin Soriano testified on cross-examination that they did not bring Maria Elena Espina to the station.[31] This declaration is totally at odds with Special Investigator Palencia’s testimony that they brought Espina with them, but she was later released. Agent Soriano does not recall if a certain Ric Bergonio was arrested and booked in connection with the raid,[32] in contrast with Palencia’s testimony that Bergonio was arrested and booked as a ploy to mislead the appellants. Equally noteworthy is the fact that the joint-affidavit[33] of Palencia and Soriano was signed by their Chief, Max B. Salvador, on February 10, 1997, or almost a month before the operation. Perhaps realizing this mistake, the same joint affidavit was again subscribed and sworn to on March 11, 1997 before State Prosecutor Paño.[34]

Second, one of the documents presented on the witness stand by NBI Special Investigator Palencia was a written request[35] addressed to the Forensic Chemistry Division for the dusting with fluorescent powder of the “buy-bust money.” Note that said request for the dusting of the marked money bore the date “7 February ’97.”[36] In other words, the request was made 30 days before the “buy-bust” operation took place. It is mystifying how fluorescent powder could have copiously attached to appellants’ hands despite the lapse of time.[37] It is also highly unusual that the ultraviolet examination results of all five of the appellants revealed that

their fingers, palms and even the back of their hands were positive for fluorescent powder. Note that one does not use the back of one's hands when counting money. Under the premises, we hold that the findings of the NBI Forensic Chemist are more supportive of the appellants' declaration that Agent Martin Soriano, in the guise of shaking hands with them, surreptitiously smudged their hands with fluorescent powder.

Third, according to Palencia, they released Ric Bergonio because the latter was allegedly one of their informants[38] supplying information regarding the drug activities of a gang in Pasay City called the Erning Aprid Gang. But Palencia also said they released Elena Espina because the latter just came out of the bathroom and cried. If indeed Ric Bergonio supplies information to their confidential informant, then there was no reason for them to include him in the arrest and information sheet since he would be acting as their agent. Also, in some parts of his testimony, Palencia declared that Ric Bergonio, their informant, stayed on the first floor while he (Palencia) acted as poseur-buyer.[39] In other parts, Palencia declared that it was Ric Bergonio who received the buy-bust money when the exchange happened on the second floor.[40]

Further, Palencia testified that he and his companions, Martin Soriano and Allan Santiago, immediately after the arrest of Rodolfo Regacho at the ante-room, entered at the same time Room 12 where they saw the rest of the accused counting money on the bed.[41] In stark contrast, Soriano testified that when he entered Room 12, all the appellants were already in a squatting position and neutralized by Palencia.[42] Nobody explained the variance.

Finally, the two agents could not even agree on the amount of the marked money. Agent Soriano testified that there were only five (5) 100-peso bills that were used as marked money[43] while Special Investigator Palencia declared that there were ten (10) marked bills.[44] They forgot, apparently, that one of the essential elements to be established in the prosecution of drug "buy-bust" cases is the delivery of the thing sold and the payment therefor.[45]

The trial court's reliance on the testimony of the hotel's officer-in-charge, Ernesto Belen, that all the accused were arrested in Room 12 to prove the existence of conspiracy is not well-taken. It is clear from Belen's testimony that he did not work on March 9, 1997, the day of the arrest, purportedly since he was in the province.[46] Perforce, any knowledge acquired by him relative to the arrests made on March 9, 1997 is purely hearsay, without probative value.

Given these inconsistencies, there is an imperative need to present as evidence the marked money at the trial. However, Palencia testified that the marked money was in the custody of Soriano who lost them.[47] For his part, Soriano testified that the marked money was in the possession of Palencia, together with the rest of the show money confiscated by the Eastern Police District in connection with a case filed against Palencia.[48]

In drug-related cases, it is imperative that the prosecution establish the identity of the illegal drug, which constitutes the very corpus delicti of the offense.[49] Strangely, no sample of "shabu" tested by the NBI Forensic Chemist, which was allegedly seized from the appellants, was presented in court. The specimen substance, which tested positive for "shabu" was supposedly discarded and could no longer be located, according to the testimony of NBI Forensic Chemist Purificando.[50] Absent both the marked money and the illegal drugs allegedly sold to them, the prosecution has no hard proof of the fact of payment as well as of delivery other than the naked claims of Palencia and Soriano. All these do not inspire confidence in the prosecution's version of the incident, because the testimonies of the lawmen are replete with inconsistencies. Here, we find that the presumption of regularity in the performance of official duty is negated by their deeds as well as by their words given on the witness stand.

As regards Elena Espina, the proffered reason for her release is too shallow to be believed. Since she was allegedly in the same room as the rest of the appellants, she should have been similarly charged, at least on a reasonable suspicion of conspiracy. Apparently, her tears were too irresistible even for hard-boiled law enforcers

so they released her precipitately.

While this Court commends the efforts of law enforcement agencies who are engaged in the difficult and dangerous task of apprehending and prosecuting drug-traffickers, we must reiterate that courts must be extra vigilant in trying drug cases lest innocent persons are made to suffer death or other severe penalties for drug offenses.[51]

While it is true that denial and frame-up as defenses are weak, courts should not look at them with precipitate disfavor for if taken in the light of other evidence on record, they may be sufficient to acquit the accused.[52] Here, all the appellants sufficiently explained their presence in the Longwood Hotel through clear, straightforward, and convincing testimonies. The consistency in their separate testimonies as to the events surrounding their arrest and the fact that they complement each other constrain us to believe that their version of the incident holds water. In contrast, the prosecution witnesses leave us in doubt as to whether appellants were arrested in connection with the police “buy-bust” operation or, as contended by the defense, for some other activity associated with police frame-up.

Under our adversarial system, the burden of proof lies with the prosecution. That burden must be discharged on the strength of its own evidence, without relying on the weakness of the defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who are to act in judgment, is indispensable to overcome the constitutional presumption of innocence.[53]

In this case, it is difficult to affirm the trial court’s judgment of conviction which, to our mind, is based on little regard for the issues raised by the defense, and on a bare declaration that the guilt of the appellants has been proved. One’s conscience rebels against doubtful imposition of death and other grave penalties without moral certainty as to the guilt of the accused. Where the evidence for the prosecution is concededly weak, even if the evidence for defense is also weak, the accused must be duly accorded the benefit of the doubt in view of the constitutional presumption of innocence that an accused enjoys.[54] When the circumstances are capable of two or more inferences, as in this case, one of which is consistent with the presumption of innocence while the other is compatible with guilt, the presumption of innocence must prevail and the court must acquit. As sagely said, it is better to acquit a guilty man than to convict an innocent man.[55]

WHEREFORE, the appealed decision dated December 11, 1998 of the Regional Trial Court of Pasay City, Branch 114, is REVERSED and SET ASIDE. Appellants Jesus G. Batocoy, Eduardo P. Vergara, Jaime B. Ponce, Ricardo F. Garcia and SPO1 Rodolfo C. Regacho are ACQUITTED on grounds of reasonable doubt. Their release from detention is ordered forthwith, unless they are being held for another lawful cause. The Director of the Bureau of Corrections is directed to submit a report of their release within five (5) days from notice hereof.

Costs de officio.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and Azcuna, JJ., concur.

[1] Rollo, pp. 24-43.

[2]SEC. 15. Sale, Administration, Dispensation, Delivery, Transportation and Distribution of Regulated Drugs. – The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall sell, dispense, deliver, transport or

distribute any regulated drug.

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[3] SEC. 16. Possession or Use of Regulated Drugs.. – The penalty of reclusion perpetua to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who shall possess or use any regulated drug without the corresponding license or prescription, subject to the provisions of Section 20 hereof.

[4] Death Penalty Law.

[5] Records, pp. 1-2.

[6] Id. at 79-80.

[7] TSN, 14 October 1997, p. 7.

[8] Id. at 19.

[9] Rollo, p. 28.

[10] Records, pp. 68-71.

[11] TSN, 8 August 1997, pp. 17, 20, 22, 24, 25.

[12] Id. at 29.

[13] TSN, 3 November 1998, pp. 3 & 15.

[14] Rollo, pp. 29-30.

[15] Ibid.; Exhibit “8”, Folder of Exhibits, pp. 35-37.

[16] TSN, 14 May 1998, pp. 3-32.

[17] TSN, 16 July 1998, pp. 6-28.

[18] TSN, 19 August 1998, pp. 3-23.

[19] Rollo, pp. 42-43.

[20] Id. at 78-79.

[21] Id. at 201-202.

[22] Id. at 174.

[23] People v. Obordo, G.R. No. 139528, 9 May 2002, p. 20.

[24] People v. Enfectana, G.R. No. 132028, 19 April 2002, p. 9.

[25] People v. Tan, G.R. No. 133001, 14 December 2000, 348 SCRA 116, 122.

[26] People v. Tan, G.R. No. 129376, 29 May 2002, p. 10.

[27] Records, pp. 28-29.

[28] Id. at 32-33.

[29] Id. at 40-41.

- [30] Id. at 44-45.
- [31] TSN, 12 December 1997, p. 22.
- [32] Id. at 26.
- [33] Id. at 68-71.
- [34] Id. at 71.
- [35] Exhibit "L," Folder of Exhibits, p. 14.
- [36] Ibid.
- [37] See *People v. Tan*, supra at 124.
- [38] TSN, 14 October 1997, pp. 52-53.
- [39] Id. at 61-63.
- [40] Id. at 20-24.
- [41] Id. at 30-32.
- [42] TSN, 20 November 1997, pp. 18-19.
- [43] Id. at 13.
- [44] TSN, 14 October 1997, p. 12.
- [45] *People v. Razul*, G.R. No. 146470, 22 November 2002, p. 9.
- [46] TSN, 3 November 1998, p. 5.
- [47] TSN, 14 October 1997, pp. 13-14.
- [48] TSN, 12 December 1997, pp. 38-39.
- [49] *People v. Casimiro*, G.R. No. 146277, 20 June 2002, p. 11.
- [50] TSN, 12 September 1997, p. 12.
- [51] *People v. Pagaura*, G.R. No. 95352, 28 January 1997, 267 SCRA 17, 24.
- [52] *People v. Uson*, G.R. No. 101313, 5 July 1993, 224 SCRA 425, 435-436.
- [53] *People v. Villanueva*, G.R. No. 131773, 13 February 2002, p. 21.
- [54] *People v. Uson*, supra at 436.
- [55] *People v. Gonzales*, G.R. No. 106873, 3 October 2000, 341 SCRA 688, 706.

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