



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff-Appellee,

G.R. No. 198452

Present:

- versus -

CARPIO, J.,
Chairperson,
DEL CASTILLO,
PEREZ,
REYES,* and
LEONEN, JJ.**

Promulgated:

VICENTE ROM,
Accused-Appellant.

FEB 19 2014

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DECISION

PEREZ, J.:

On appeal is the Decision¹ dated 9 August 2010 of the Court of Appeals in CA-G.R. CR-H.C. No. 00579 affirming with modification the Decision² dated 24 June 2002 of the Regional Trial Court (RTC) of Cebu City, Branch 10, in Criminal Case Nos. CBU-55062, CBU-55063 and CBU-55067, finding herein appellant Vicente Rom guilty beyond reasonable doubt of violating Sections 15³ (illegal sale of *shabu*), 15-A⁴ (maintenance

* Per Special Order No. 1633 dated 17 February 2014.

** Per Special Order No. 1636 dated 17 February 2014.

¹ Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Edgardo L. Delos Santos and Agnes Reyes Carpio, concurring. *Rollo*, pp. 4-14.

² Penned by Presiding Judge Soliver C. Peras. *CA rollo*, pp. 24-57.

³ 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.

⁴ Sec. 15-A. *Maintenance of a Den, Dive or Resort for Regulated Drug Users*. – 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 or group of persons who shall maintain a den, dive or

of a drug den) and 16⁵ (illegal possession of *shabu*), Article III of Republic Act No. 6425, also known as the Dangerous Drugs Act of 1972, as amended by Republic Act No. 7659.⁶ In Criminal Case Nos. CBU-55062 and CBU-55063, for respectively violating Sections 15 and 16, Article III of Republic Act No. 6425, as amended, the trial court imposed on the appellant the penalty of *prision correccional* in its medium period ranging between two (2) years, four (4) months and one (1) day, as minimum, to four (4) years and two (2) months, as maximum. While in Criminal Case No. CBU-55067, that is for violating Section 15-A, Article III of Republic Act No. 6425, as amended, the trial court sentenced the appellant to *reclusion perpetua* and he was likewise ordered to pay a fine of ₱500,000.00. The Court of Appeals, however, modified and reduced the penalty in Criminal Case Nos. CBU-55062 and CBU-55063 to an imprisonment of six (6) months of *arresto mayor*, as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum, after applying the Indeterminate Sentence Law.

In three separate Informations⁷ all dated 1 September 2000, the appellant was charged with violation of Sections 15, 15-A and 16, Article III of Republic Act No. 6425, as amended. The three Informations read:

Criminal Case No. CBU-55062

That on or about the 31st day of August 2000, at about 10:30 P.M. in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, [herein appellant], **with deliberate intent and without being authorized by law**, did then and there **sell, deliver or give away** to a poseur buyer **one (1) heat sealed plastic packet of white crystalline substance weighing 0.03 gram locally known as “shabu”**, containing Methylamphetamine Hydrochloride, a regulated drug.⁸ (Emphasis and italics supplied).

Criminal Case No. CBU-55063

That on or about the 31st day of August 2000, at about 10:30 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this

resort where any regulated drugs is used in any form, or where such regulated drugs in quantities specified in Section 20, paragraph 1 of this Act are found.

⁵ 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.

⁶ Also known as “An Act To Impose The Death Penalty On Certain Heinous Crimes, Amending For That Purpose The Revised Penal Laws, As Amended, Other Special Penal Laws, And For Other Purposes.”

⁷ CA *rollo*, pp. 10-15.

⁸ Id. at 10.

Honorable Court, [appellant], **with deliberate intent and without being authorized by law**, did then and there **have in [his] possession and control or use** the following:

Four (4) heat sealed plastic packets of white crystalline substance weighing 0.15 gram

locally known as “shabu”, containing Methylamphetamine Hydrochloride, a regulated drug, **without the corresponding license or prescription.**⁹ (Emphasis and italics supplied).

Criminal Case No. CBU-55067

That on the 31s[t] day of August, 2000, at about 10:30 P.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, [appellant], **with deliberate intent**, did then and there **knowingly maintain a den for regulated users** along the interior portion of Barangay T. Padilla in violation to (sic) the provision of Sec. 15-A of Art. III of RA 6425.¹⁰ (Emphasis supplied).

On arraignment, the appellant, with the assistance of counsel *de parte*, pleaded NOT GUILTY¹¹ to all the charges. A pre-trial conference was conducted on 2 April 2001, but no stipulation or agreement was arrived at.¹² The pre-trial conference was then terminated and trial on the merits thereafter ensued.

The prosecution presented as witnesses Police Officer 2 Marvin Martinez (PO2 Martinez), the designated *poseur*-buyer; PO3 Franco Mateo Yanson (PO3 Yanson); and Police Senior Inspector Marvin Sanchez (P/Sr. Insp. Sanchez), the team leader of the buy-bust operation against the appellant. They were all assigned at the Vice Control Section of the Cebu City Police Office (VCS-CCPO). The testimony, however, of P/Sr. Insp. Mutchit G. Salinas (P/Sr. Insp. Salinas), the forensic analyst, was dispensed¹³ with in view of the admission made by the defense as to the authenticity and due existence of Chemistry Report No. D-1782-2000¹⁴ dated 1 September 2000 and the expertise of the forensic analyst.

The prosecution’s evidence established the following facts:

⁹ Id. at 12.

¹⁰ Id. at 14.

¹¹ As evidenced by the Certificate of Arraignment and RTC Order both dated 2 October 2000. Records, pp. 31-32.

¹² Id. at 43.

¹³ Id. at 48.

¹⁴ Id. at 46.

Two weeks prior to 31 August 2000, the VCS-CCPO received confidential information from their informant that *alias* Dodong, who turned out later to be the appellant, whose real name is Vicente Rom, was engaged in the illegal sale of *shabu* and also maintained a drug den at his residence in *Barangay* T. Padilla, Cebu City. Thus, the VCS-CCPO, particularly PO2 Martinez, conducted surveillance and monitoring operation.¹⁵

On 31 August 2000, at around 10:15 p.m., P/Sr. Insp. Sanchez, Chief of VCS-CCPO, formed a team to conduct a buy-bust operation against the appellant. The buy-bust team was composed of PO2 Martinez (*poseur-buyer*), Senior Police Officer 1 Jesus Elmer Fernandez (SPO1 Fernandez), PO3 Yanson, PO3 Benicer Tamboboy (PO3 Tamboboy), PO3 Jaime Otadoy (PO3 Otadoy) and P/Sr. Insp. Sanchez (team leader). Being the designated *poseur-buyer*, PO2 Martinez was provided with a ₱100.00 peso bill and a ₱10.00 peso bill buy-bust money bearing Serial Nos. AD336230 and AM740786, respectively, and both were marked with the initials of PO2 Martinez, *i.e.* “MM.” The former amount would be used to buy *shabu* while the latter amount would serve as payment for the use of the drug den.¹⁶

After the briefing, the buy-bust team proceeded to the target area and upon arrival there at around 10:20 p.m., PO2 Martinez proceeded directly to the appellant’s house, which was earlier pointed to by their informant, who was also with them during the buy-bust operation. The rest of the buy-bust team strategically positioned themselves nearby. Once PO2 Martinez reached the appellant’s house, he knocked on the door, which the appellant opened. PO2 Martinez subsequently told the appellant that he wanted to buy *shabu* worth ₱100.00. The appellant looked around to check if PO2 Martinez had a companion. Seeing none, the appellant took out his wallet from his pocket and got one heat-sealed plastic packet containing white crystalline substance, later confirmed to be *shabu*, and gave it to PO2 Martinez. The latter, in turn, gave the ₱100.00 peso bill marked money to the appellant. While this sale transaction was going on, PO3 Yanson and P/Sr. Insp. Sanchez were only five to eight meters away from PO2 Martinez and the appellant. P/Sr. Insp. Sanchez clearly witnessed the sale transaction as it happened right outside the door of the appellant’s house.¹⁷

Afterwards, PO2 Martinez told the appellant that he wanted to sniff the *shabu*, so the latter required the former to pay an additional amount of

¹⁵ Testimony of PO2 Martinez, TSN, 29 November 2001, pp. 3 and 15; Testimony of PO3 Yanson, TSN, 6 December 2001, pp. 11-12; Testimony of P/Sr. Insp. Sanchez, TSN, 7 February 2002, pp. 10-12.

¹⁶ Id. at 3-5; Id. at 3-4; Id. at 3-5.

¹⁷ Id. at 6-7 and 16; Id. at 4-5 and 12; Id. at 5-6 and 13-14.

₱10.00 as rental fee for the use of his place. After paying the said amount, the appellant allowed PO2 Martinez to enter his house. Once inside the house, PO2 Martinez was directed by the appellant to proceed to the room located at the right side of the *sala*. Upon entering the said room, PO2 Martinez saw three persons, later identified to be Jose Delloso (Delloso), Danilo Empuerto (Empuerto) and Arnie Ogong (Ogong), already sniffing *shabu*.¹⁸

Thereupon, PO2 Martinez made a missed call to P/Sr. Insp. Sanchez, which was their pre-arranged signal, to signify that the whole transaction was consummated. After the lapsed of about 10 to 15 seconds, the rest of the team, who were just few meters away from the appellant's house, barged in and identified themselves as police officers. PO2 Martinez then told PO3 Yanson to hold the appellant. PO3 Yanson grabbed the appellant and made a body search on the latter that led to the recovery of four heat-sealed transparent plastic packets containing white crystalline substance, which were inside the appellant's brown wallet that was tucked in his pocket; the buy-bust money consisting of ₱100.00 peso bill and ₱10.00 peso bill; and ₱280.00 consisting of two ₱100.00 peso bills, one ₱50.00 peso bill and three ₱10.00 peso bills believed to be the proceeds of the appellant's illegal activities. The one heat-sealed plastic packet of *shabu* bought by PO2 Martinez from the appellant remained in the possession of the former.¹⁹

The appellant, Delloso, Empuerto and Ogong were informed of their constitutional rights and were later brought by the buy-bust team to their office, together with the confiscated items, for documentation. At the office of the buy-bust team, the confiscated items were given to their investigator, SPO1 Fernandez, who marked the one heat-sealed plastic packet containing white crystalline substance, which was the subject of the sale transaction, with VRR-8-31-2000-01 (buy-bust) while the other four heat-sealed plastic packets containing white crystalline substance, which were recovered from the appellant, were similarly marked with VRR-8-31-2000-02 to VRR-8-31-2000-05. The "VRR" in the markings are the initials of the appellant, *i.e.*, Vicente Ramonida Rom.²⁰

Thereafter, all the five heat-sealed plastic packets containing white crystalline substance, together with the Request for Laboratory Examination, were brought by PO3 Yanson to the Philippine National Police (PNP) Crime Laboratory for chemical analysis, which examination yielded positive results

¹⁸ Id. at 7-8; Testimony of P/Sr. Insp. Sanchez, TSN, 7 February 2002, id. at 8 and 13-14.

¹⁹ Id. at 8-10 and 12; Testimony of PO3 Yanson, TSN, 6 December 2001, pp. 5-8 and 18; Testimony of P/Sr. Insp. Sanchez, id. at 6-7 and 15; Appellee's Brief dated 5 January 2005, CA *rollo*, p. 166.

²⁰ Id. at 7 and 12-13; Id. at 6, 8-9 and 11; Id. at 8 and 10.

for the presence of *methylamphetamine hydrochloride* or “*shabu*,”²¹ as evidenced by Chemistry Report No. D-1782-2000.²²

For its part, the defense presented the appellant and Teresita Bitos, whose testimonies consist of sheer denials. Their version of the 31 August 2000 incident is as follows:

At around 10:15 p.m. to 10:30 p.m. of 31 August 2000, the appellant was at the house of his daughter, Lorena Cochera (Lorena), in *Barangay T. Padilla*, Cebu City, as Lorena had asked her father to get the monthly house rental fee from Teresita Bitos, whose nickname is “Nene.” While the appellant and Nene were talking, the police officers suddenly barged in. The appellant noticed that PO2 Martinez proceeded to the inner portion of the house and opened the door of the rooms. Nene stopped them but the police officers told her to just keep quiet. The police officers went on opening the door of the two rooms, where they saw three male persons. The police officers frisked the appellant and the three other men. The police officers likewise took appellant’s wallet containing ₱360.00. The appellant then requested Nene to tell his daughter that he was arrested. Thereafter, the police officers brought the appellant and the three other men to the police station.²³

The appellant denied that he sold *shabu* to PO2 Martinez. He also denied that he was maintaining a drug den and that he allowed persons to sniff *shabu* inside the house in *Barangay T. Padilla*, Cebu City, in exchange for a sum of money. The appellant likewise denied that he knew the three other men who were arrested inside the room in the said house. The appellant claimed instead that he knew PO2 Martinez prior to 31 August 2000 because the latter usually stayed at the house to apprehend snatchers. Also, a week before 31 August 2000, he and PO2 Martinez had a conversation and he was asked to pinpoint the “fat fish,” which is the code for the big time pusher. When he said that he does not know of such pusher, PO2 Martinez got angry. The appellant maintained that on 31 August 2000, he was no longer living in the house in *Barangay T. Padilla*, Cebu City, as his daughter had already brought him to Minglanilla, Cebu, as early as July 1999. On the said date, Nene was already occupying the house and had subleased one of its rooms as his daughter Maya told him so. The appellant

²¹ Id. at 13; Id. at 9-11; Id. at 10.

²² Records, p. 46.

²³ Testimony of the Appellant, TSN, 11 April 2002, pp. 2-3; Testimony of PO2 Martinez, TSN, 7 February 2002, pp. 3-5; Testimony of Teresita Bitos, TSN, 7 March 2002, p. 4.

admitted that a year prior to 31 August 2000, and before he transferred to Minglanilla, he was apprehended for illegal possession of *shabu*.²⁴

The narration of the appellant was corroborated by Nene on all material points.

Testifying on rebuttal, PO2 Martinez denied that he knew the appellant prior to 31 August 2000. PO2 Martinez clarified that he came to know the appellant only on the night that they conducted the buy-bust operation.²⁵

Finding the testimonies of the prosecution witnesses to be credible, competent and convincing as they were able to satisfactorily prove all the elements of the offenses charged against the appellant, the trial court, in its Decision dated 24 June 2002, held the appellant guilty beyond reasonable doubt of violation of Sections 15, 15-A and 16, Article III of Republic Act No. 6425, as amended. The trial court disposed of the case as follows:

IN THE LIGHT OF THE FOREGOING CIRCUMSTANCES, the Court finds the [herein appellant] for –

- 1) **Criminal Case No. CBU-55062, for violating Section 15, Article III, Republic Act No. 6425, as amended, GUILTY.** There being no mitigating nor any aggravating circumstance proven, the Court hereby **imposes the penalty of *PRISION CORRECCIONAL* in the MEDIUM PERIOD ranging between TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY, as minimum[,] to FOUR (4) YEARS and TWO (2) MONTHS, as maximum;**
- 2) **Criminal Case No. CBU-55063, for violating Section 16, Article III, Republic Act No. 6425, as amended, GUILTY.** In the absence of any mitigating or aggravating circumstance, the Court **imposes the penalty of *PRISION CORRECCIONAL* in the MEDIUM PERIOD ranging between TWO (2) YEARS, FOUR (4) MONTHS and ONE (1) DAY, as minimum to FOUR (4) YEARS and TWO (2) MONTHS, as maximum; and**
- 3) **Criminal Case No. CBU-55067, for violating Section 15-A, Article III, Republic Act No. 6425, as amended, GUILTY.** The court hereby **imposes upon the [appellant] the penalty of *RECLUSION PERPETUA* and a FINE of FIVE HUNDRED THOUSAND (P500,000.00) PESOS.**

²⁴ Id. at 4-9; Id. at 5 and 7.

²⁵ Testimony of PO2 Martinez (on rebuttal), TSN, 18 April 2002, pp. 4-5.

The five (5) heat-sealed plastic packets of white crystalline substance containing methylamphetamine hydrochloride, locally known as *shabu*, are hereby **CONFISCATED** in favor of the government and shall be destroyed in accordance with the law prohibiting said drug.²⁶ (Emphasis, italics and underscoring supplied).

The appellant appealed the trial court's Decision to this Court *via* Notice of Appeal.²⁷ However, pursuant to this Court's decision in *People v. Mateo*,²⁸ the case was transferred to the Court of Appeals for intermediate review.

On 9 August 2010, the Court of Appeals rendered the now assailed Decision affirming with modification the ruling of the trial court. Its decretal portion reads, thus:

WHEREFORE, in view of all the foregoing, the Decision of the RTC, Branch 10, Cebu City in Criminal Cases No. CBU-55062, CBU-55063 and CBU-55067 is hereby **AFFIRMED WITH MODIFICATION** concerning Criminal Cases No. CBU-55062 and CBU-55063, for which [the herein appellant] is sentenced to suffer the penalty of imprisonment from six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum of the Indeterminate Sentence Law.²⁹

The Court of Appeals upheld the conviction of the appellant on all the charges against him as the prosecution was able to establish his guilt beyond reasonable doubt since all the essential elements of illegal sale and possession of *shabu* were duly proven by the prosecution. As to the charge of maintaining a drug den, the same was also established by the fact that PO2 Martinez himself paid ₱10.00 to sniff the *shabu* in one of the rooms of the appellant's house. The appellant's denial, therefore, cannot prevail over the evidence hurled against him.

The Court of Appeals, however, deemed it necessary to modify the penalty in Criminal Case Nos. CBU-55062 and CBU-55063. It explained that the sale of less than 200 grams of *shabu* is punishable with a penalty ranging from *prision correccional* to *reclusion temporal*, depending on the quantity. In this case, the quantity of *shabu* illegally sold to the *poseur-buyer* by the appellant was 0.03 gram. Pursuant to the second paragraph of

²⁶ Records, pp. 125-126.

²⁷ CA *rollo*, p. 58.

²⁸ G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

²⁹ *Rollo*, p. 14.

Section 20,³⁰ Article IV of Republic Act No. 6425, as amended, the proper penalty to be imposed for the illegal sale of 0.03 gram of *shabu* would be *prision correccional*. Also, in this case, the appellant had in his possession 0.15 gram of *shabu*, which is punishable also with imprisonment of *prision correccional*. Thus, applying the Indeterminate Sentence Law, the appellant must be sentenced to an imprisonment of six months of *arresto mayor*, as minimum, to four years and two months of *prision correccional*, as maximum, in Criminal Case No. CBU-55062, as well as in Criminal Case No. CBU-55063.³¹

Still unsatisfied, the appellant appealed the Court of Appeals' Decision to this Court *via* Notice of Appeal.³²

Both the appellant and the Office of the Solicitor General manifested³³ that they would no longer file their respective supplemental briefs as the issues have already been fully discussed in their respective appeal briefs³⁴ with the Court of Appeals.

The appellant's assignment of errors as stated in his Appellant's Brief are as follows:

- I. The Regional Trial Court erred in convicting the [herein appellant] notwithstanding the inherent incredibility of evidence for the prosecution;

³⁰ Sec. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime.* – The penalties for offenses under Section 3, 4, 7, 8 and 9 of Article II and Sections 14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities :

1. 40 grams or more of opium;
2. 40 grams or more of morphine;
3. 200 grams or more of *shabu* or *methylamphetamine hydrochloride*;
4. 40 grams or more of heroin;
5. 750 grams or more of Indian hemp or *marijuana*;
6. 50 grams or more of *marijuana* resin or *marijuana* resin oil;
7. 40 grams or more of cocaine or cocaine hydrochloride; or
8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalty shall range from *prision correccional* to *reclusion perpetua* depending upon the quantity. (Emphasis and italics supplied).

³¹ CA *rollo*, pp. 10-14.

³² Id. at 222.

³³ *Rollo*, pp. 21 and 28-30.

³⁴ CA *rollo*, pp. 102-115 and 158-190.

- II. The Regional Trial Court gravely erred in allowing the evidence of the prosecution despite the indubitable evidence that the [appellant] i[s] innocent of the crime[s] charged; [and]
- III. The Regional Trial Court erred in convicting the [appellant] in spite of the failure of the prosecution to prove the guilt of the [appellant] beyond reasonable doubt.³⁵

The appellant avers that the testimony of the *poseur*-buyer was absurd, illogical, contrary to reason and highly incredible for no person who is engaged in an illegal transaction would leave the door of the house open after such transaction. Moreover, no person would sell *shabu* to a buyer when he knew all along that the said buyer was a police officer as it was ridiculous to expose oneself to the danger of being caught and arrested.

The appellant similarly holds that the entry in the house was illegal and there was certainly no transaction that took place therein. The search and the seizure made in connection thereto were also invalid. Thus, the pieces of evidence allegedly obtained by the police officers were inadmissible for being the “fruit of a poisonous tree.” The same cannot be used against him in violation of his rights.

The appellant believes that the prosecution failed to prove his guilt beyond reasonable doubt as their testimonies as to the facts and circumstances surrounding the case were contrary to human conduct, especially with regard to the allegation that he knowingly maintained a drug den, since he was no longer the owner of the house, which was the subject of the search, and he did not live there anymore.

The appellant’s contentions are devoid of merit.

In essence, the issues in this case hinge on the credibility of the testimonies of the prosecution witnesses.

It is a fundamental rule that findings of the trial court which are factual in nature and which involve the credibility of witnesses are accorded with respect, more so, when no glaring errors, gross misapprehension of facts, and speculative, arbitrary, and unsupported conclusions can be gathered from such findings. The reason behind this rule is that the trial court is in a better position to decide the credibility of witnesses having heard their testimonies and observed their deportment and manner of

³⁵ Id. at 108.

testifying during the trial.³⁶ The rule finds an even more stringent application where the trial court's findings are sustained by the Court of Appeals.³⁷

After a careful perusal of the records, this Court finds no cogent or compelling reason to overturn the findings of both lower courts, which were adequately supported by the evidence on record.

To secure a conviction for **illegal sale of dangerous drugs**, like *shabu*, the following essential elements must be duly established: (1) identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.³⁸ Succinctly, the delivery of the illicit drug to the *poseur*-buyer, as well as the receipt of the marked money by the seller, successfully consummates the buy-bust transaction. Hence, what is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti* as evidence.³⁹

In the case at bench, the prosecution was able to establish the above-enumerated elements beyond moral certainty. The prosecution witnesses adequately proved that a buy-bust operation actually took place on which occasion the appellant was caught red-handed giving one heat-sealed plastic packet containing white crystalline substance to PO2 Martinez, the *poseur*-buyer, in exchange for ₱100.00. PO2 Martinez, being the *poseur*-buyer, positively identified the appellant in open court to be the same person who sold to him the said one-heat sealed plastic packet of white crystalline substance for a consideration of ₱100.00,⁴⁰ which when examined was confirmed to be *methamphetamine hydrochloride* or *shabu* per Chemistry Report No. D-1782-2000 issued by P/Sr. Insp. Salinas, Head, Chemistry Branch, PNP Regional Crime Laboratory Office 7. Upon presentation thereof in open court, PO2 Martinez duly identified it to be the same object sold to him by the appellant as it had the marking "VRR-8-31-2000 (buy-bust)," which SPO1 Fernandez had written thereon in their presence.⁴¹ This testimony of PO2 Martinez was corroborated by P/Sr. Insp. Sanchez, who was just five to eight meters away from the former and the appellant during the sale transaction.⁴²

³⁶ *People v. De Leon*, G.R. No. 186471, 25 January 2010, 611 SCRA 118, 127-128.

³⁷ *People v. Veloso*, G.R. No. 188849, 13 February 2013, 690 SCRA 586, 595; *Quinicot v. People*, G.R. No. 179700, 22 June 2009, 590 SCRA 458, 469.

³⁸ *People v. Santiago*, 564 Phil. 181, 193 (2007); *People v. De Vera*, 341 Phil. 89, 95 (1997).

³⁹ *People v. Torres*, G.R. No. 191730, 5 June 2013.

⁴⁰ Testimony of PO2 Martinez, TSN, 29 November 2011, pp. 6-7 and 11.

⁴¹ Id. at 7; Testimony of PO3 Yanson, TSN, 6 December 2001, p. 11; Testimony of P/Sr. Insp. Sanchez, TSN, 7 February 2002, p. 8.

⁴² Testimony of P/Sr. Insp. Sanchez, id. at 13.

Evidently, the prosecution had established beyond reasonable doubt the appellant's guilt for the offense of illegal sale of *shabu* in violation of Section 15, Article III of Republic Act No. 6425, as amended.

We already had occasion to show the unacceptability of the contention of the appellant that the testimony of the *poseur*-buyer was absurd, illogical, contrary to reason and highly incredible for no person who is engaged in an illegal transaction would leave the door of the house open after such transaction. In case after case, we observed that drug pushers sell their prohibited articles to any prospective customer, be he a stranger or not, in private **as well as in public places, even in the daytime**. Indeed, the drug pushers have become increasingly daring, dangerous and, worse, **openly defiant of the law**. Hence, what matters is not the existing familiarity between the buyer and the seller or the time and venue of the sale, but the fact of agreement and the acts constituting the sale and the delivery of the prohibited drugs.⁴³

With regard to the offense of **illegal possession of dangerous drugs**, like *shabu*, the following elements must be proven: (1) the accused is in possession of an item or object that is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.⁴⁴ All these elements have been established in this case.

On the occasion of the appellant's arrest for having been caught in *flagrante delicto* selling *shabu*, PO3 Yanson conducted a body search on the former resulting to the recovery of four more heat-sealed plastic packets containing white crystalline substance inside his wallet that was tucked in his pocket with an aggregate weight of 0.15 gram, which were later confirmed to be *methamphetamine hydrochloride* or *shabu*. PO3 Yanson identified in open court the said four heat-sealed plastic packets of *shabu* with markings "VRR-8-31-2000-02" to "VRR-8-31-2000-05" written thereon by SPO1 Fernandez to be the same objects recovered from the appellant.⁴⁵ PO2 Martinez, the *poseur*-buyer, corroborated this testimony of PO3 Yanson.⁴⁶

Definitely, the records do not show that the appellant has the legal authority to possess the four heat-sealed plastic packets of *shabu*. Settled is

⁴³ *People v. Requiz*, 376 Phil. 750, 759-760 (1999).

⁴⁴ *Quinitcot v. People*, supra note 37 at 477.

⁴⁵ Testimony of PO3 Yanson, TSN, 6 December 2001, pp. 7-8.

⁴⁶ Testimony of PO2 Martinez, TSN, 29 November 2011, pp. 9-10.

the rule that possession of dangerous drugs constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of a satisfactory explanation of such possession. As such, the burden of evidence is shifted to the accused to explain the absence of knowledge or *animus possidendi*,⁴⁷ which the appellant in this case miserably failed to do.

There is also no truth on the appellant's claim that the entry in the house was illegal making the search and the seizure in connection thereto invalid, rendering the pieces of evidence obtained by the police officers inadmissible for being the "fruit of a poisonous tree."

This Court in *Dimacuha v. People*⁴⁸ clearly states:

The Constitution enshrines in the Bill of Rights the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose. To give full protection to it, the Bill of Rights also ordains the exclusionary principle that any evidence obtained in violation of said right is inadmissible for any purpose in any proceeding.

In *People v. Chua Ho San* [citation omitted] we pointed out that the interdiction against warrantless searches and seizures is not absolute and that warrantless searches and seizures have long been deemed permissible by jurisprudence in the following instances: (1) search of moving vehicles; (2) seizure in plain view; (3) customs searches; (4) waiver or consented searches; (5) stop and frisk situations (Terry search); and **(6) search incidental to a lawful arrest. The last includes a valid warrantless search and seizure pursuant to an equally warrantless arrest**, for, while as a rule, an arrest is considered legitimate if effected with a valid warrant of arrest, the **Rules of Court recognizes permissible warrantless arrest, to wit: (1) arrest in *flagrante delicto*; (2) arrest effected in hot pursuit; and (3) arrest of escaped prisoners.**

Here, the petitioner was caught in *flagrante delicto* while in the act of delivering 1.15 grams and in actual possession of another 10.78 grams of methamphetamine hydrochloride (*shabu*) as a result of an entrapment operation conducted by the police on the basis of information received from Benito Marcelo regarding petitioner's illegal drug trade. Petitioner's arrest, therefore, was lawful and the subsequent seizure of a bag of *shabu* inserted inside the cover of her checkbook was justified and legal in light of the prevailing rule that an officer making an arrest may take from the person arrested any property found upon his person in order to find and seize things connected with the crime. **The seized regulated drug is,**

⁴⁷ *Abuan v. People*, 536 Phil. 672, 695 (2006).

⁴⁸ 545 Phil. 406 (2007).

therefore, admissible in evidence, being the fruit of the crime.⁴⁹
(Emphasis supplied).

To repeat, the appellant, in this case, was caught in *flagrante delicto* selling *shabu*, thus, he was lawfully arrested. Following *Dimacuha*, the subsequent seizure of four heat-sealed plastic packets of *shabu* in the appellant's wallet that was tucked in his pocket was justified and admissible in evidence for being the fruit of the crime.

With the foregoing, this Court is fully convinced that the prosecution had likewise proved beyond a shadow of reasonable doubt that the appellant is guilty of the offense of illegal possession of *shabu* in violation of Section 16, Article III of Republic Act No. 6425, as amended.

Going to the charge of maintaining a drug den in violation of Section 15-A, Article III of Republic Act No. 6425, as amended, the prosecution had also established appellant's guilt beyond reasonable doubt.

A drug den is a lair or hideaway where prohibited or regulated drugs are used in any form or are found. Its existence may be proved not only by direct evidence but may also be established by proof of facts and circumstances, including evidence of the general reputation of the house, or its general reputation among police officers.⁵⁰ In this case, this fact was proven by none other than the testimony of PO2 Martinez, the *poseur*-buyer, who after buying the *shabu* had told the appellant that he wanted to sniff the same to which the latter responded by requiring the former to pay a rental fee of ₱10.00. The appellant, thereafter, allowed PO2 Martinez to enter his house and directed him to proceed to one of the rooms located at the right side of the *sala*. Upon entering the said room, PO2 Martinez saw three other persons already sniffing *shabu*.⁵¹ This testimony of PO2 Martinez was corroborated by PO3 Yanson and P/Sr. Insp. Sanchez.⁵²

Moreover, as aptly observed by the Court of Appeals, several peso bills were found in the appellant's wallet, including three ₱10.00 peso bills, which circumstances bolstered the prosecution's assertion that the appellant

⁴⁹ Id. at 420-421.

⁵⁰ *People v. Ladjaalam*, 395 Phil. 1, 19-20.

⁵¹ Testimony of PO2 Martinez, TSN, 29 November 2011, pp. 7- 8.

⁵² Testimony of PO3 Yanson, TSN, 6 December 2001, pp. 6-8; Testimony of P/Sr. Insp. Sanchez, TSN, 7 February 2002, pp. 7 and 10.

has indeed allowed his house to be used as a drug den for a fee of ₱10.00 per person.⁵³

In his attempt to exonerate himself, the appellant vehemently asserts that he was no longer the owner of the house in *Barangay T. Padilla*, Cebu City, and he was no longer residing therein. The defense also presented Teresita Bitos to corroborate this claim of the appellant.

The testimony of Teresita Bitos corroborating the appellant's testimony was not credible. She herself admitted that the appellant requested her to testify in his favor.⁵⁴

Also, considering the seriousness of the charges against the appellant, he did not bother to present his daughter, who is the alleged owner of the house in *Barangay T. Padilla*, Cebu City, to bolster his claim.

Time and again, this Court held that denial is an inherently weak defense and has always been viewed upon with disfavor by the courts due to the ease with which it can be concocted. Inherently weak, denial as a defense crumbles in the light of positive identification of the appellant, as in this case. The defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt, which is not the case here. Verily, mere denial, unsubstantiated by clear and convincing evidence, is negative self-serving evidence which cannot be given greater evidentiary weight than the testimony of the prosecution witness who testified on affirmative matters.⁵⁵ Moreover, there is a presumption that public officers, including the arresting officers, regularly perform their official duties.⁵⁶ In this case, the defense failed to overcome this presumption by presenting clear and convincing evidence. Furthermore, this Court finds no ill motive that could be attributed to the police officers who had conducted the buy-bust operation. Even the allegation of the appellant that PO2 Martinez got angry with him when he failed to pinpoint the big time pusher cannot be considered as the ill motive in implicating the appellant on all the three charges against him for this is self-serving and uncorroborated.

⁵³ CA Decision dated 9 August 2010. *Rollo*, p. 12; Testimony of PO2 Martinez, TSN 29 November 2011, p. 10.

⁵⁴ Testimony of Teresita Bitos, TSN, 7 March 2002, p. 7.

⁵⁵ *People v. Mabonga*, G.R. No. 134773, 29 June 2004, 433 SCRA 51, 65-66.

⁵⁶ *People v. Chen Tiz Chang*, 382 Phil. 669, 696 (2000).

Given all the foregoing, this Court sustains the appellant's conviction on all the charges against him.

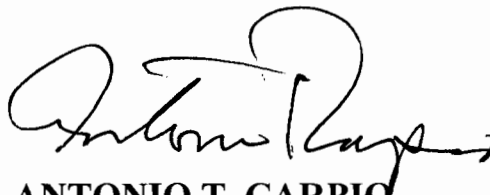
WHEREFORE, premises considered, the Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 00579 dated 9 August 2010 is hereby **AFFIRMED *in toto***. No Costs.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



MARIANO C. DEL CASTILLO
Associate Justice




BIENVENIDO L. REYES
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION


I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice