

FIRST DIVISION

[G.R. No. 191396, April 17, 2013]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARILYN AGUILAR Y MANZANILLO, ACCUSED-APPELLANT.**

DECISION

LEONARDO-DE CASTRO, J.:

For review is the November 26, 2009 Decision^[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 01984, which affirmed the August 19, 2005 Decision^[2] of the Regional Trial Court (RTC) in Criminal Case Nos. 04-2962-CFM and 04-2963-CFM, wherein accused-appellant Marilyn Aguilar y Manzanillo (Aguilar) was found guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the “Comprehensive Dangerous Drug Act of 2002.”

On December 1, 2004, two separate Informations were filed against Aguilar in the Pasay City RTC, Branch 116 charging her with violation of Sections 5 and 11, respectively, of Article II of Republic Act No. 9165. The pertinent portions of the Informations read as follows:

Criminal Case No. 04-2962-CFM:

That on or about the 30th day of November, 2004, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Marilyn Aguilar y Manzanillo, without authority of law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control [of] 0.31 gram of Methamphetamine Hydrochloride (shabu), a dangerous drug.^[3]

Criminal Case No. 04-2963-CFM:

That on or about the 30th day of November, 2004, in Pasay City, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Marilyn Aguilar y Manzanillo, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to another 0.45 gram of Methamphetamine Hydrochloride (shabu), a dangerous drug.^[4]

Aguilar pleaded not guilty to both charges when arraigned on January 10, 2005.^[5] During the pre-trial conference^[6] on February 16, 2005, Aguilar and her counsel admitted the genuineness and due execution of the Letter Request for Drug Test, Initial Laboratory Report, Request for Laboratory Examination, and photocopy of the marked money in evidence. Counsel for Aguilar also admitted Aguilar’s identity as the one arrested by the police officers on November 30, 2004, as indicated in the Informations. The parties also agreed that among the issues to be resolved by the RTC were the validity of Aguilar’s arrest and the subsequent search of her person absent the necessary warrants.

Trial then ensued with the prosecution presenting Police Officer 2 (PO2) Roel Medrano, the poseur-buyer who was a member of the Philippine National Police (PNP) assigned at the Anti-Illegal Drugs, Special Operation Task Force of the Southern Police District at Fort Bonifacio in Taguig, Manila. It also presented Police Inspector (P/Insp.) Angel Timario, the Forensic Chemist of the PNP Crime Laboratory in Camp Crame, Quezon City who conducted the examination of the drugs. After the prosecution rested its case, the defense presented Aguilar herself and her niece, Gerolyn A. Lazaro (Lazaro).

Version of the Prosecution

According to PO2 Medrano, a week prior to Aguilar's arrest on November 30, 2004, he had already received some phone calls from "concerned citizens"^[7] regarding the drug-dealing activities of one "Baby Mata" at Pildera, Pasay City. PO2 Medrano verified the information by calling on Eva, his informant, who was also a drug user. Eva confirmed that she personally knew Baby Mata, who was her regular drug-supplier. PO2 Medrano thereafter learned of Baby Mata's residence at Road IV near the *barangay* hall, and that she was plying her trade at Road I. Although he placed Baby Mata under surveillance, PO2 Medrano admitted that he did not actually see her selling drugs to customers.^[8]

On November 30, 2004, a team, led by Senior Police Officer (SPO) 2 Rey Millare, was formed to conduct an entrapment operation against Aguilar. The team submitted a pre-operation report to the Philippine Drug Enforcement Agency (PDEA) and PO2 Medrano was designated as the poseur-buyer. He was provided with two P500.00 bills, the serial numbers of which he noted and thereafter marked with "JG," the initials of P/Supt. Jose Gentiles, the Chief of the District Intelligence and Investigation Branch. At around 6:20 in the evening, the team was in place at Pildera to conduct the buy-bust operation. With Eva, PO2 Medrano went to Road I, where they saw Baby Mata talking to someone. When the person left, Eva approached Baby Mata and after about five minutes, waved at PO2 Medrano to come over. Eva introduced PO2 Medrano as a security guard and a fellow "scorer." Baby Mata then asked how much PO2 Medrano wanted, to which he answered "*isang bulig lang*,"^[9] which was half a gram of *shabu*, worth P1,000.00. Upon Baby Mata's request, PO2 Medrano gave her the two pre-marked P500.00 bills, which she took with her left hand. Baby Mata, with her right hand, thereafter reached for a plastic sachet containing crystalline substance from the right pocket of her jeans, and handed it to PO2 Medrano. After examining the sachet, PO2 Medrano pocketed the *shabu* and pressed the call button of his mobile phone, to signal his team that the sale had been consummated. PO2 Benedicto A. Mendoza (Mendoza), who was then only seven to eight meters away, rushed towards them and arrested Baby Mata. The police officers immediately introduced themselves as such, showed Baby Mata their identification cards, and apprised her of her constitutional rights. PO2 Medrano confiscated the buy-bust money he earlier handed Baby Mata, which were still in her left hand, and another sachet of *shabu*, which turned up after she was ordered to empty her pockets. PO2 Medrano accordingly marked the two sachets of *shabu* with "RM-1" and "RM-2" and thereafter brought Baby Mata to the Southern Police District Station at Fort Bonifacio, Taguig.^[10]

The seized items were brought by PO2 Medrano on the same day to the PNP Crime Laboratory in Camp Crame, Quezon City. They were received and examined by P/Insp. Timario who made the following findings, as embodied in Chemistry Report No. D-1171-04:

SPECIMEN SUBMITTED:

A – One (1) staple-sealed brown envelope with names and signatures containing two (2) heat-sealed transparent plastic sachets each containing white crystalline substance having the following markings and net weights:

A-1 - (RM-1 301104) = 0.45 gram
A-2 - (RM-2 301104) = 0.31 gram

PURPOSE OF LABORATORY EXAMINATION:

To determine the presence of dangerous drugs.

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for Methylamphetamine hydrochloride, a dangerous drug.

CONCLUSION:

Specimens A-1 and A-2 contain Methylamphetamine hydrochloride, a dangerous drug.

x x x x

REMARKS:

TIME AND DATE COMPLETED:

0120H 01 December 2004

EXAMINED BY:

(SGD.)
ANGEL C. TIMARIO
Police Inspector
Forensic Chemist^[11]

Version of the Defense

Aguilar contradicted the prosecution and denied the charges against her. She claimed that on November 30, 2004, at around 10:00 a.m., while she and her niece, Lazaro, were waiting for a jeepney to Baclaran along NAIA Road, PO2 Medrano and PO2 Mendoza accosted and handcuffed her without any explanation. When she asked why she was being apprehended, she was simply told to explain at the station. Lazaro in the meantime remained quiet so as not to reveal her identity as Aguilar's companion. Aguilar was then boarded in a yellow car and while she was being driven around Nayong Pilipino, PO2 Medrano allegedly told her that they needed money and requested for her cooperation by giving up "Lilit,"^[12] a drug-pusher. At the station, the same police officers demanded that she produce the amount of P100,000.00 and asked her to call her relatives for the money.^[13]

Aguilar argued that there could have been no buy-bust operation as she was already in detention at the station at the time such operation was supposedly conducted. She averred that while she was once a resident of Pasay City, she no longer lived there and that she would only go there to visit her mother. As to her nickname, Aguilar explained that she had always been called as such.^[14]

Lazaro corroborated Aguilar's testimony but could not provide certain details such as where the car was headed or at which precinct Aguilar was taken when they received the call from the police informing them of Aguilar's arrest. She also said that Aguilar already resided in Bulacan and she was known as "Baby Mata" because of her big eyes.^[15]

Ruling of the RTC

On August 19, 2005, the RTC gave credence to the prosecution's version and found Aguilar guilty beyond reasonable doubt in both cases, to wit:

WHEREFORE, in x x x light of the foregoing premises and considerations, judgment is hereby rendered as follows:

- 1) In Criminal Case No. 04-2962-CFM, this Court finds the accused Marilyn Aguilar y Manzanillo GUILTY beyond reasonable doubt of committing the crime of Violation of Section 11, sub-paragraph (3), Article II of R.A. No. 9165 and she is hereby sentenced to suffer the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and four (4) months and to pay a fine of P300,000.00, plus costs; and
- 2) In Criminal Case No. 04-2963-CFM, this Court likewise finds the said accused GUILTY beyond reasonable doubt of committing the crime of Violation of Section 5, Article II of R.A. No. 9165 and she is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of P500,000.00, plus costs.

The two (2) 0.31 and 0.45 gram of Methamphetamine hydrochloride or shabu involved in these cases are hereby declared confiscated in favor of the Government and ordered to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper and appropriate disposition in accordance with the provisions of the law.^[16]

Aguilar's denial and theory of frame-up, the RTC held, cannot be accepted over the prosecution's case, which was not only clear and convincing, but also amply supported by the evidence.

Aguilar appealed^[17] the RTC's decision to the Court of Appeals and the case was docketed as CA-G.R. CR.-H.C. No. 01984.

Ruling of the Court of Appeals

Finding that the prosecution has proven Aguilar's guilt of the two crimes beyond reasonable doubt, the Court of Appeals affirmed the RTC's Decision on November 26, 2009.

Issues

Aggrieved, Aguilar elevated^[18] the above ruling to this Court, assigning the same errors she assigned before the Court of Appeals,^[19] viz:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF SECTIONS 5 AND 11, ARTICLE II [OF] REPUBLIC ACT [NO.] 9165.

II

THE COURT A QUO GRAVELY ERRED IN NOT GIVING WEIGHT AND CREDENCE TO ACCUSED-APPELLANT'S DEFENSE OF DENIAL AND FRAME-UP.^[20]

In the main, Aguilar argues that the RTC erred in convicting her as the prosecution failed to establish her guilt beyond reasonable doubt. In support of such assertion, Aguilar points out the fact that the police officers failed to follow the protocol in the custody and control of seized items due to the absence of an inventory and photographs of the confiscated drugs as required by Republic Act No. 9165 and its implementing rules and regulations.

Aguilar further posits that she should be acquitted because “without the instigation of the informant the alleged transaction involving the sale of *shabu* would not have transpired.”^[21]

This Court’s Ruling

This Court has made an exhaustive review of the records of this case and has found no reason to overturn the lower courts.

Aguilar was charged and convicted for the sale and possession of dangerous drugs in violation of Sections 5 and 11, Article II of Republic Act No. 9165. The pertinent provisions provide:

SEC. 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (P100,000.00) to Five hundred thousand pesos (P500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

x x x x

SEC. 11. Possession of Dangerous Drugs. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

- (1) 10 grams or more of opium;
- (2) 10 grams or more of morphine;
- (3) 10 grams or more of heroin;
- (4) 10 grams or more of cocaine or cocaine hydrochloride;
- (5) 50 grams or more of methamphetamine hydrochloride or “shabu”;
- (6) 10 grams or more of marijuana resin or marijuana resin oil;
- (7) 500 grams or more of marijuana; and
- (8) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDMA) or “ecstasy,” paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamide (LSD), gamma hydroxybutyrate (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity

possessed is far beyond therapeutic requirements, as determined and promulgated by the Board in accordance to Section 93, Article XI of this Act.

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

- (1) Life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantity of methamphetamine hydrochloride or "shabu" is ten (10) grams or more but less than fifty (50) grams;
- (2) Imprisonment of twenty (20) years and one (1) day to life imprisonment and a fine ranging from Four hundred thousand pesos (P400,000.00) to Five hundred thousand pesos (P500,000.00), if the quantities of dangerous drugs are five (5) grams or more but less than ten (10) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or three hundred (300) grams or more but less than five hundred (500) grams of marijuana; and
- (3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (P300,000.00) to Four hundred thousand pesos (P400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "shabu," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Custody and Control of Evidence

Paragraph 1, Section 21, Article II of Republic Act No. 9165 outlines the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs, *viz*:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who

shall be required to sign the copies of the inventory and be given a copy thereof[.]

Implementing the above provision, Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, states:

SEC. 21. Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]** (Emphasis supplied.)

While a testimony about a perfect and unbroken chain is ideal, such is not always the standard as it is almost always impossible to obtain an unbroken chain.^[22] A perusal of the law reveals, however, that failure to strictly comply with the procedure in Section 21 will not render the arrest illegal or the items seized inadmissible in evidence, provided that the integrity and evidentiary value of such items are preserved since they will be used in the determination of the guilt or innocence of the accused.^[23]

Despite the failure of the apprehending officers to make an inventory of and to photograph the items seized from Aguilar, they were nevertheless able to prove that the integrity and evidentiary value of the evidence had been preserved, the chain of custody of such items, having been adequately established in the case at bar. As aptly observed by the Court of Appeals:

It was undisputed that at about 6:20 in the evening of November 30, 2004, PO2 Medrano bought a sachet of shabu from accused-appellant which he paid with two (2) P500.00 marked bill[s]. PO2 Medrano placed the shabu in his pocket then executed the pre-arranged signal. After arresting accused-appellant, PO2 Medrano seized the marked money from the former's left hand then frisked accused-appellant and found another sachet of shabu. He marked the sachet of shabu he bought "RM-1" and the one he found in accused-appellant's pocket "RM-2". They brought accused-appellant and the seized items to the headquarters. While accused-appellant was being booked, the team prepared the request for laboratory examination. The request and the seized drugs were personally brought by PO2 Medrano to the PNP Crime Laboratory in Quezon City that same evening. P/Insp. Angel Timario received the request and specimens brought by PO2 Medrano. He weighed and examined the contents of the sachets, confirming that the items were

methamphetamine hydrochloride or shabu. His findings are embodied in Chemistry Report No. D-1171-04. The specimens which bore the markings "RM-1" and "RM-2" were identified by PO2 Medrano during trial.^[24] (Citations omitted.)

Moreover, Aguilar was not able to show that there was bad faith or ill will on the part of the police officers, or tampering with the evidence, thus the presumption that the integrity of the evidence was preserved remains. The same applies to the presumption that the police officers properly discharged their duties. Since Aguilar failed to overcome the foregoing presumptions, it cannot be disputed that the drugs seized from her were the same ones examined in the crime laboratory and presented in court during trial. The crucial link in the chain of custody of the seized drugs was therefore established by the prosecution.^[25]

Proof Beyond Reasonable Doubt Established

Aguilar, having failed to convince this Court that the consistent findings of the lower courts are tainted with arbitrariness, capriciousness, or palpable errors, then the hornbook doctrine that the factual findings of the Court of Appeals, affirming those of the RTC, are binding, applies.^[26]

1. Illegal Sale of Dangerous Drugs

To successfully prosecute a case for the illegal sale of dangerous drugs, this Court, in *People v. Del Rosario*,^[27] held:

In a prosecution for the sale of a dangerous drug, the following elements must be proven: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Simply put, "[in] prosecutions for illegal sale of *shabu*, what is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence." (Citations omitted.)

As the poseur-buyer, PO2 Medrano was able to positively identify^[28] Aguilar as the seller of the *shabu* during his testimony. He also testified on the exchange of the marked money and *shabu* that he and Aguilar had during their transaction. More importantly, the prosecution was able to present the very same marked money and *shabu*, the *corpus delicti*, to the court as evidence.

2. Illegal Possession of Dangerous Drugs

With respect to the charge of illegal possession of dangerous drugs, this Court finds that the prosecution sufficiently established the following elements:

- 1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug;
- (2) such possession is not authorized by law; and
- (3) the accused freely and consciously possessed the drug.^[29]

Aside from the *shabu* Aguilar sold to PO2 Medrano, another sachet of *shabu* was recovered in her possession. Mere possession of a prohibited drug constitutes *prima facie* evidence of intent to possess, *animus possidendi*, sufficient to convict an accused absent a satisfactory explanation of such possession. The burden of evidence, thus, is shifted to the accused to explain the absence of intent to possess.^[30] Aguilar miserably failed to discharge such burden.

Defenses of Denial and Frame-up

Time and again, this Court has looked at the defenses of denial and frame-up with disfavor. While Aguilar's niece, Lazaro, did testify in her defense, this Court, in agreement with the observation of the Court of Appeals, cannot give such testimony full faith and credit as Lazaro herself declared that she would testify on anything for her aunt^[31] and she came to court to help in the release of her aunt.^[32] This admission of absolute willingness to make declarations in court for the singular purpose of judicial proceedings to ascertain the truth and adversely affects the credibility of the witness.

The explanation of this Court in *People v. Cruz*^[33] with regard to the defenses of denial and frame-up finds applicability in this case, given that Aguilar also accused the police officers of extorting money from her, to wit:

Denial or frame-up is a standard defense ploy in most prosecutions for violation of the Dangerous Drugs Law. As such, it has been viewed by the court with disfavor for it can just as easily be concocted. It should not accord a redoubtable sanctuary to a person accused of drug dealing unless the evidence of such frame up is clear and convincing. Without proof of any intent on the part of the police officers to falsely impute appellant in the commission of a crime, the presumption of regularity in the performance of official duty and the principle that the findings of the trial court on the credibility of witnesses are entitled to great respect, deserve to prevail over the bare denials and self-serving claims of appellant that he had been framed up. Neither can appellant's claim of alleged extortion by the police operatives be entertained. Absent any proof, appellant's assertion of extortion allegedly committed by the police officers could not be successfully interposed. It remains one of those standard, worn-out, and impotent excuses of malefactors prosecuted for drug offenses. What appellant could have done was to prove his allegation and not just casually air it. (Citations omitted.)

Defense of Instigation

Aguilar further claims that the validity of the buy-bust operation is doubtful as she was instigated to sell *shabu* to PO2 Medrano. In support, Aguilar quotes PO2 Medrano's own testimony wherein he agreed to the possibility that his informant may have instigated the sale.^[34]

In resolving issues involving the validity of a buy-bust operation, specifically the question of whether the government had induced the accused to commit the offense as charged, this Court usually finds it instructive to first distinguish between entrapment and instigation. This Court's distinction in the recent case of *People v. Legaspi*,^[35] is elucidative, to wit:

Entrapment is sanctioned by the law as a legitimate method of apprehending criminals. Its purpose is to trap and capture lawbreakers in the execution of their criminal plan. Instigation, on the other hand, involves the inducement of the would-be accused into the commission of the offense. In such a case, the instigators become co-principals themselves.

Where the criminal intent originates in the mind of the instigating person and the accused is lured into the commission of the offense charged in order to prosecute him, there is instigation and no conviction may be had. Where, however, the criminal intent originates in the mind of the accused and the criminal offense is completed, even after a person acted as a decoy for the state, or public officials

furnished the accused an opportunity for the commission of the offense, or the accused was aided in the commission of the crime in order to secure the evidence necessary to prosecute him, there is no instigation and the accused must be convicted. The law in fact tolerates the use of decoys and other artifices to catch a criminal. (Citations omitted.)

This Court recognizes instigation as a valid defense that can be raised by the accused. However, for this defense to prosper, the accused must prove, with sufficient evidence, that the government induced him or her to commit the offense.^[36] Aguilar claims that she was instigated by the informant to sell *shabu* to PO2 Medrano. Her only evidence to support this claim was her interpretation of PO2 Medrano's testimony.

This Court finds Aguilar's defense of instigation unworthy of belief. It has been established that when the accused is charged with the sale of illicit drugs, the following defenses cannot be set up:

- (1) that facilities for the commission of the crime were intentionally placed in his way; or
- (2) that the criminal act was done at the solicitation of the decoy or poseur-buyer seeking to expose his criminal act; or
- (3) that police authorities feigning complicity in the act were present and apparently assisted in its commission.^[37] (Citation omitted.)

In *Legaspi*, we added: “[t]he foregoing are especially true in that class of cases where the offense is the kind that is habitually committed, and the solicitation merely furnished evidence of a course of conduct. Mere deception by the police officer will not shield the perpetrator, if the offense was committed by him free from the influence or the instigation of the police officer.”^[38] The illegal sale and possession of dangerous drugs belong to such class of cases and buy-bust operations employing poseur-buyers are legally permissible to expose the offender and catch him in the act.

This Court agrees with the Court of Appeals' pronouncement that “[t]here was no showing that the informant employed any act of inducement such as repeated requests for the sale of prohibited drugs or offers of exorbitant prices.”^[39] Aguilar was never forced or coerced to sell the prohibited drug to PO2 Medrano. In fact, PO2 Medrano did not even have to say anything as Aguilar immediately asked him how much he wanted after he was introduced as a “scorer.”^[40] When PO2 Medrano mentioned the quantity he desired to purchase, Aguilar promptly took the marked money from him and readily handed him the *shabu*. All these show that Aguilar had been habitually engaged in the sale of drugs. Also, such circumstances not only authorized, but obligated the police officers to arrest Aguilar, despite the lack of arrest warrant, as the crime was committed in their presence.^[41]

It is worthy to note that, aside from the fact that this defense was only brought up on appeal, it is being submitted along with the defenses of denial and frame-up. Aguilar cannot logically claim on one hand that she did not commit the acts constituting the charges against her, and at the same time ask this Court to consider that while she may have committed the act, she had been instigated to commit such crime. The defense of instigation is simply contradictory to the defenses of denial^[42] and frame-up.

WHEREFORE, premises considered, the Court hereby **AFFIRMS** the November 26, 2009 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 01984.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin, Villarama, Jr., and Reyes, JJ., concur.

[1] *Rollo*, pp. 2-18; penned by Associate Justice Mario V. Lopez with Associate Justices Rebecca de Guia-Salvador and Apolinario D. Bruselas, Jr., concurring.

[2] CA *rollo*, pp. 18-26; penned by Judge Eleuterio F. Guerrero.

[3] Records, pp. 2-3.

[4] Id. at 18-19.

[5] Id. at 35-36.

[6] Id. at 48-49.

[7] TSN, March 21, 2005, p. 6.

[8] Id. at 4-10.

[9] Id. at 18.

[10] Id. at 11-22.

[11] Records, p. 90.

[12] TSN, August 3, 2005, p. 4.

[13] Id. at 3-4.

[14] Id. at 5.

[15] TSN, May 17, 2005, pp. 4-12.

[16] CA *rollo*, pp. 25-26.

[17] Id. at 27.

[18] Id. at 109-111.

[19] *Rollo*, pp. 62-63.

[20] CA *rollo*, p. 36.

[21] Id. at 47.

[22] *People v. Castro*, G.R. No. 194836, June 15, 2011, 652 SCRA 393, 404-405.

[23] *People v. Malik Manalao*, G.R. No. 187496, February 6, 2013.

[24] *Rollo*, pp. 15-16.

[25] *People v. Castro*, supra note 22 at 407.

[26] Id.

[27] G.R. No. 188107, December 5, 2012.

[28] TSN, March 21, 2005, p. 23.

[29] *Asiatico v. People*, G.R. No. 195005, September 12, 2011, 657 SCRA 443, 450.

[30] *People v. Quiamanlon*, G.R. No. 191198, January 26, 2011, 640 SCRA 697, 716.

[31] TSN, May 17, 2005, p. 13.

[32] Id. at 15.

[33] *People v. Cruz*, G.R. No. 187047, June 15, 2011, 652 SCRA 286, 301-302.

[34] CA *rollo*, pp. 44-47.

[35] G.R. No. 173485, November 23, 2011, 661 SCRA 171, 180.

[36] Id. at 181.

[37] Id.

[38] Id.

[39] *Rollo*, p. 10.

[40] TSN, March 21, 2005, p. 18.

[41] *People v. Legaspi*, supra note 35 at 182.

[42] Id. at 185.