

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL BUENAFE Y PLACIDO ALIAS “BRUNO”, ACCUSED-APPELLANT.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

Noel Buenafe (accused-appellant) appeals the Decision[1] dated May 16, 2011 rendered by the Regional Trial Court, Branch 15, Roxas City in Criminal Case No. C-123-09 and Criminal Case No. C-124-09. In the former case, accused-appellant is convicted of Violation of Section 5, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act, while in the latter case, he is convicted with Violation of Section 11, also under Article II of the Act.

The dispositive portion[2] of the decision reads:

WHEREFORE, foregoing premises considered, this court finds the accused, NOEL BUENAFE:

- In Criminal Case No. 123-09, GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II of R.A. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and hereby sentences him to suffer the penalty of Life Imprisonment and a fine of P500,000.00

- In criminal Case No. C-124-09, GUILTY beyond reasonable doubt of the crime of Violation of Section 11, Article II of R.A. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences him to suffer the penalty of imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years of Reclusion Temporal and a Fine of P300,000.00

The trial prosecutor is directed to inform the Board of the final termination of this case, which, in turn, shall request the court for leave to turn over the representative samples of the illegal drugs presented in evidence to the PDEA for proper disposition and destruction within twenty four hours from receipt of this case.

SO ORDERED.

The Information[3] filed on June 1, 2009, against accused Noel Buenafe under Criminal Case No. C-123-09, alleges:

That on or about the 7[th] day of May 2009, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to PO3 ANTONIO BUENVENIDA (a PNP “poseur-buyer”), one small sachet of suspected methamphetamine hydrochloride or “shabu” weighing 0.02 grams, a dangerous drug, without authority to sell and distribute the same.

CONTRARY TO LAW.

The Information[4] also filed on even date against accused Noel Buenafe under Criminal Case No. C-124-09, alleges:

That on or about the 7[th] day of May 2009, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent, did then and there willfully, unlawfully

and feloniously have in his possession and control one heat-sealed transparent sachet and containing methamphetamine hydrochloride or “shabu”, a dangerous drug, weighing 0.05 grams, a dangerous drug, without being authorized by law to possess the same.

CONTRARY TO LAW.

The accused entered a “NOT GUILTY” plea during the arraignment[5] on August 17, 2009.

Facts of the case

The prosecution presented Police Officers Buenvenida, Datiles, Ibañez, Ecto and Paulin who testified that they were members of the Intelligence and Investigation Division, Anti-Illegal Drug Special Operations Group of Roxas City. They received an information on the proliferation of illegal drugs particularly in Mckinley, Roxas City. The group conducted a surveillance that resulted in the identification of the accused as one of the drug dealers. A buy-bust operation was planned to be conducted in the early morning of May 7, 2009 and for this purpose a four-man team was organized to carry out the plan. The team were composed of PO3 Antonio Buenvenida as the poseur-buyer; PO2 Datiles as back-up and PO3 Paulin and PO2 Ibañez as additional back-up. The team prepared three (3) one hundred peso bills and one (1) two hundred peso bill as marked money, all of which were reflected in the police blotter. The team arrived around 4:05 A.M of May 7, 2009 at the designated place with their asset at the corner of Mckinley and San Roque Sts, Roxas City. Thereafter, the accused appeared and the asset introduced PO3 Buenvenida as “scorer” who needed to score. The accused told PO3 Buenvenida that a small sachet of shabu was worth Php 500.00. The poseur-buyer immediately gave the Php 500.00 marked money and the accused in turn gave the plastic sachet of shabu. PO3 Buenvenida then executed the pre-arranged signal by lighting a cigarette, as a sign that the transaction was completed. The rest of the team rushed to the scene. PO3 Buenvenida introduced himself as police officer. The accused tried to escape but he was subdued by the other police officers and arrested him. The accused was bodily searched by Police Officer Datiles who found another sachet of shabu and the marked money. The plastic sachets of shabu were marked and the accused was then brought to the Police Station of Roxas City for recording and investigation.

The police witnesses identified in court the Certificate of Inventory, marked money, Police Blotter Report, photographs, spot report to the PDEA and the Chemistry Report.

For his part, accused Noel Buenafe testified that at about 5:00 o'clock in the morning of May 7, 2009, he was waiting for a tricycle to ferry him to his home at San Roque st., Roxas City. Suddenly, two (2) men approached and handcuffed him (accused). Accused was surprised and he asked the men what wrong he had done. The men responded by telling him not to move. They introduced themselves as policemen. They (policemen) searched him (accused) and found his three (3) hundred peso bills and prescription. The policemen made him board the tricycle and brought him to the police station of Roxas City. When they arrived, he was investigated and he was asked to stripped off his clothes. He was bodily searched again but they found nothing. The accused said he was brought to Roxas Memorial Hospital for medical check up. He was found normal and no body injuries were noted.

After the trial, the RTC promulgated its judgment of conviction dated May 15, 2009. Aggrieved, accused filed a Notice of Appeal[6] dated May 26, 2011.

On May 16, 2011, the trial court issued an order (Mittimus) transferring the person of the accused-appellant to the New Bilibid Prison, Muntinlupa City.[7]

ASSIGNMENT OF ERRORS

I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE BUY-BUST OPERATION WAS ILLEGAL.

II

THE TRIAL COURT ERRED IN NOT FINDING THAT THE SEARCH OF APPELLANT AND THE SUPPOSED SEIZURE OF ILLEGAL ITEMS FROM APPELLANT WAS ILLEGAL.

III

THE TRIAL COURT ERRED IN NOT FINDING THAT THE INTEGRITY OF THE CORPUS DELICTI WAS DUBIOUS.

IV

THE TRIAL COURT ERRED IN NOT FINDING THAT THERE WAS A GAPING HOLE IN THE CHAIN OF CUSTODY OF THE ITEMS PURPORTEDLY TAKEN FROM APPELLANT.

V

THE TRIAL COURT ERRED IN FINDING THAT THE POLICE OFFICERS ARE ENTITLED TO THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THEIR DUTY DESPITE THE IRREGULARITIES THAT THE POLICE OFFICERS COMMITTED IN THE HANDLING OF THE EVIDENCE AGAINST THE APPELLANT.

VI

THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN BEYOND REASONABLE DOUBT ACCUSED-APPELLANT'S GUILT.

Arguments

Accused-appellant argues in his Brief that the buy-bust operation was illegal. There was no documentary proof or written report that was adduced by the prosecution. There was no entry in the police blotter of the surveillance made by the police officers against the accused-appellant. The purported surveillance made by the police officers appears to be concocted as it was not established that the accused-appellant was engaged in illegal activities. The illegality of the buy-bust operation was further strengthened due to the fact that the buy-bust money was not immediately authenticated by the Clerk of Court after the money was seized from the accused-appellant. It took five (5) months before the buy-bust money was authenticated by the Clerk of Court.

According to the accused-appellant the taking of photograph and the marking of the seized items were not shown to have been made in the presence of the accused-appellant, a representative from the media, the DOJ and any elected public official. Moreover, the arresting officers failed to comply with the mandatory requirements laid down under Section 21, paragraph 1, Article II of R.A 9165.

Furthermore, the prosecution did not even offer any justifiable ground in deviating from the standard procedure prescribed under the law. In the case of *People of the Philippines vs. Alberto Alcuizar*[8], the Supreme Court held that the dangerous drug itself, the shabu in this case, constitutes the very corpus delicti of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the corpus delicti must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.

The accused-appellant describes that there is a gaping hole in the chain of custody of the sachets of the illegal drugs. The name of the two persons who delivered the alleged two sachets of shabu was not indicated in the

Chemistry Report. PO3 Dexter Paulin's allegation that he was the one who delivered the sachet was self-serving. This statement was not corroborated by any of the personnel in the crime laboratory. There is a probability that the sachets found positive for Methamphetamine Hydrochloride may not be the sachets purportedly recovered from the accused-appellant. Accused-appellant thus asserts that he should be acquitted since the prosecution failed to establish his guilt.

The Solicitor General in his Appellee's Brief counter argues that the testimony of PO3 Buenvenida amply proved all the elements of the crime of illegal sale of dangerous drugs. This is demonstrated when accused-appellant handed a sachet of shabu to PO3 Buenvenida, after the latter had handed to him (accused-appellant) the marked and unmarked money worth P500.00. Meanwhile on the charge of possession of illegal drugs or "shabu", it is clear from the testimony of PO1 Datiles that accused-appellant was caught in flagrante delicto of possessing two sachets of shabu. One was sold to the poseur-buyer and the other was seized from him during the body search. Accused-appellant failed to show any proof that he was authorized by law to possess them. Since accused-appellant was caught in flagrante delicto, there is therefore, a prima facie evidence of animus possidendi on the accused-appellant's part.

It is the contention of the Solicitor General that bare denial of the accused-appellant and alleged frame-up cannot prevail over direct testimonies of the arresting officers. In the case of *People vs. Urbano*[9], the Supreme Court said that courts generally view with disfavor the defense of denial, on account of its aridity and the facility with which the accused can concoct it to suit their defense. Negative and self-serving, it deserves no weight in law when substantiated by clear and convincing evidence. In the present case, the accused-appellant did not present any evidence to prove his innocence. He merely denied that he was involved in any drug transaction and claimed that he was framed up.

The Solicitor General also asseverates that the procedures laid down under Section 21(a), Article II of R.A 9165 admits of certain exception. Non-compliance with Section 21(a) of R.A. 9165 does not render an accused's arrest illegal or the items seized from the accused-appellant inadmissible. What is essential is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused-appellant.[10] It can be gleaned from the testimonies of the prosecution witnesses that the police officers took the necessary precaution in documenting and securing the evidence seized after the buy-bust operation. The police officers immediately inventoried and photographed the illegal drugs and marked money recovered.

Finally, the Solicitor General says that the buy-bust operation conducted against the accused-appellant is valid. Accused-appellant is wrong to claim that the illegality of the buy-bust operation stems from the failure to document the surveillance conducted by the police officers. Well-settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment.[11]

THE COURT'S RULING

The core issue in this case is whether or not clear and convincing evidence exists to support the conviction of the accused-appellant for violation of Sections 5 and 11, Article II of R.A. No. 9165.

In Criminal Case No. C-123-09

In the case of *People of the Philippines v. Ryan Blanco y Sangkula*[12], the Supreme Court provides for the elements necessary for the succesful prosecution of illegal sale of drugs:1.) the identity of the buyer and the seller,

the object and the consideration of the sale; 2.) the delivery of the thing sold and the payment therefore. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the corpus delicti.

In the case at bar, PO3 Buenvenida (poseur-buyer) testified that when he arrived at the target area together with their confidential asset, the latter introduced him to the accused-appellant (later on identified as Noel Buenafe). Thereafter, the confidential asset informed the accused-appellant that the poseur-buyer wanted to “score”[13] The poseur-buyer gave the marked money to the accused-appellant and the latter in turn gave the plastic sachet of shabu worth php 500.00.[14] After the exchange of the plastic packet of shabu and the buy-bust money, the poseur-buyer executed the pre-arranged signal of lighting his cigarette as a sign that the transaction has been consummated.[15]

PO1 Datiles testified that when they arrived in the target area, he hid himself behind the CAPELCO post with creeping vines and hanging plants.[16] He (PO1 Datiles) said that the transaction was very much visible to him because of the light coming from the CAPELCO post and his distance between the poseur-buyer and the accused-appellant who were just right across the street.[17] There he saw the exchange of the buy-bust money and the shabu between PO3 Buenvenida and the accused-appellant. Thereafter, he saw PO3 Buenvenida hold the plastic sachet of shabu against the light post and lighted his cigarette, to indicate that the transaction has already been consummated.[18] At that instance, PO1 Datiles, rushed towards the poseur-buyer and the accused-appellant because he saw that the latter was trying to escape from PO3 Buenvenida.[19] When the accused-appellant was subdued, PO3 Buenvenida instructed PO1 Datiles to conduct body search on the accused-appellant for possible deadly weapons.

PO1 Datiles said that in the course of the body search, he recovered one plastic sachet of shabu and from the right pocket of the accused-appellant and the marked money.[20]

PO3 Paulin who acted as back-up for PO1 Datiles, testified that he was 12 meters away from the latter, the poseur-buyer and the accused-appellant. PO3 Paulin said that with the help of the street lights, he saw PO3 Buenvenida light his cigarette. PO3 Paulin responded and went to help PO3 Buenvenida subdue accused-appellant. Thereafter, PO3 Paulin said that PO1 Datiles conducted body search of accused-appellant and recovered another plastic sachet of shabu from the latter together with the buy-bust money.[21]

PO1 Datiles during the buy-bust operation was just across the street from the poseur-buyer, the confidential agent and accused-appellant while PO3 Paulin was more or less 12 meters. The buy-bust operation happened in an open space and illuminated by street lights and the lamp post near the accused-appellant. With these circumstances, it is reasonable for Us to conclude that Police Officers Datiles and Paulin witnessed the exchange of the buy-bust money and the packet of shabu between PO3 Buenvenida and the accused-appellant. Settled is the rule that as long as the police officer went through the operation as a buyer and his offer was accepted by appellant and the dangerous drug delivered to the former, the crime is considered consummated by the delivery of the goods.[22]

In Criminal Case No. C-124-09

In a prosecution for illegal possession of dangerous drugs, the following elements must concur: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; (3) the accused freely and consciously possesses the said drug.[23]

PO1 Datiles testified, as corroborated by Police Officer Paulin, that during the body search he recovered from the possession of the accused-appellant, one small plastic packet of shabu all weighing 0.05 gram per Chemistry Report No. D-162-09.[24]

However, an examination of the case records, Transcripts of Stenographic Notes (TSNs) and the Formal Offer of Exhibits,[25] would show that the witnesses failed identify the plastic sachets bought and confiscated from the accused-appellant. The pertinent portions of the testimonies of PO3 Buenvenida, who marked the plastic sachets of shabu and PO1 Paulin, are quoted below:

PO3 Buenvenida:

xxxxx

Q:

By the way these two (2) sachets of shabu that were confiscated or recovered during the entrapment operation were there markings that you made to identify these items before they were sent to the crime laboratory for laboratory examination:

A:

Yes, Sir

Q:

Are these markings reflected in the Request as well as in the Chemistry Report?

Yes Sir.

Q:

Now if the accused is present inside the courtroom will you please point to him?

A:

That is him

Witness is pointing to the person sitting at the accused bench when asked of his name answered Noel Buenafe.

Prosecutor Advincula:

That is all for the witness your Honor.[26]

xxxxx

PO1 Paulin:

xxxx

Q:

Upon the recovery of the suspected shabu from the possession of the subject, what is the next procedure did you do to the subject?

A:

The markings and the inventory were conducted.

Q:

So, you mean to say that the shabu confiscated were marked?

A:

Yes, Sir.

Q:

Do you know the markings

A:

NPB and NPB-1.

Q:

Which one is the shabu marked as NPB and recovered by Police Officer Buenvenida or by PO1 Datiles?

A:

The NPB marked was bought by PO3 Buenvenida and NPB-1 was recovered by PO1 Datiles.

Q:

Who marked these shabu?

A:

PO3 Antonio Buenvenida.

Q:

So, what is the next step that you did after it was marked?

A:

We photograph the shabu.

Q:

Showing to you Exh. "D" and "E" depicting the inventory, what is this Exh. "D"?

A:

This is the Inventory Receipt that was done by Po3 Buenvenida

Q:

How about the other picture?

A:

This is the shabu recovered from the suspect, the marked money and the show money.

Q:

So after the inventory and the markings were already done, what happened?

A:

We brought the subject to the Police Station for proper investigation.[27]

xxxxxxxxx

These excerpts from the TSNs show that instead of the two plastic sachets of shabu that should have been

identified in court, the prosecution brought only a picture[28] of the plastic sachets of shabu taken after the buy-bust operation. As a rule, object evidence such as the plastic sachets of shabu in the instant case, must be exhibited in court to prove their existence and to identify these as the drugs subject of the offenses of sale and possession thereof by the accused-appellant. Every prosecutor worth his salt would know that a picture of the drugs is not object evidence of the drugs. There was no explanation given about the whereabouts of the plastic sachets of shabu to justify the presentation of the picture in lieu of the actual drugs. In *People of the Philippines vs. Ricardo Remigio y Zapanta*[29], the Supreme Court found:

In this case, no illegal drug was presented as evidence before the trial court. As pointed out by appellant, what were presented were pictures of the supposedly confiscated items. But, in the current course of drugs case decisions, a picture is not worth a thousand words. The image without the thing even prevents the telling of a story. It is indispensable for the prosecution to present the drug itself in court.

In the recent case of *People of the Philippines vs. Reynaldo Nacua*,[30] the Supreme Court held that the sale or possession of a dangerous drug can never be proven without seizure and identification of the prohibited drug. In prosecutions involving narcotics, the narcotic substance itself constitutes the corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of paramount importance, xxxx is that the identity of the dangerous drug be likewise established beyond reasonable doubt.

The accused-appellant is thus entitled to an acquittal due to lack of evidence to prove corpus delicti of the offense of sale and possession of dangerous drugs. We abide by the Supreme Court's pronouncements in *People vs. Adrid*,[31] that nothing less than evidence of criminal culpability beyond reasonable doubt can overturn the presumption of innocence. In this regard, the onus of proving the guilt of the accused lies with the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense.

The dangerous drug itself, the shabu, constitutes the very corpus delicti of the offense and in sustaining a conviction, the identity and integrity of the corpus delicti must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant.[32]

WHEREFORE, the Decision[33] dated May 16, 2011 rendered by the Regional Trial Court, Branch 15, Roxas City in Criminal Case No. C-123-09 and Criminal Case No. C-124-09 convicting the accused-appellant Noel Buenafe y Placido for Violation of Sections 5 and 11, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act is REVERSED and SET ASIDE. Accused-appellant is hereby ACQUITTED of the charge against him for failure of the prosecution to prove his guilt beyond reasonable doubt. Unless his continued confinement is warranted for some other cause or ground, accused-appellant shall be immediately RELEASED by the Director of the New Bilibid Prison, Muntinlupa City, who shall submit a report within five (5) days from compliance of this order.

Further, it is DIRECTED that copies of the Decision be furnished to the Secretary of the Department of Justice and the Regional Director of PNP Region 6 to determine if irregularities were committed in the prosecution of this case.

SO ORDERED.

Delos Santos, and Lopez, JJ., concur.

- [1] Records, p. 147-155.
- [2] Records, p. 145-146.
- [3] Records, p. 1.
- [4] Records, p. 8.
- [5] Records, p. 30, "Certificate of Arraignment".
- [6] Records p. 150.
- [7] Records, p. 236.
- [8] G.R. No. 189980, April 6, 2011.
- [9] G.R. No. 141400, September 6, 2001.
- [10] Ibid.
- [11] G.R. No. 189806, January 12, 2010.
- [12] G.R. No. 193661, August 14, 2013.
- [13] TSN. October 19, 2009, p. 10.
- [14] TSN. October 19, p. 9.
- [15] October 26, 2009, p. 17.
- [16] TSN, October 26, 2009, p. 12.
- [17] TSN, October 26, 2009, pp. 6- 7.
- [18] Supra note 19.
- [19] TSN, October 26, 2009, p. 8.
- [20] Supra.
- [21] TSN, April 27, 2010, pp. 15-18.
- [22] People of the Philippines v. Marianito Gonzaga y Jomaya, G.R. No. 184952, October 11, 2010.
- [23] Benedicto Marquez y Rayos Del Sol v. People of the Philippines, G.R. No. 197207, March 13, 2013.
- [24] Supra note 22.
- [25] Records, pp. 161-164.
- [26] TSN, October 19, 2009, pp.18-19.
- [27] TSN, April 27, 2010, pp. 18-19.
- [28] Exhibit "E".

[29] G.R. No. 189277, December 05, 2012.

[30] G.R. No. 200165, January 30, 2013.

[31] G.R. No. 201845, March 06, 2013.

[32] People of the Philippines, vs. Alberto Bacus Alcuizar, G.R. No. 189980, April 06, 2011 citing People v. Denoman, G.R. No. 171732, 15 August 2009, 596 SCRA 257, 267 citing People v. Robles, G.R. No. 177220, 24 April 2009, 586 SCRA 647, 655-656.

[33] Rollo, pp. 34-41.

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