

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
GILBERT YBAÑEZ Y CLOMA ALIAS “BOBONG QUIDA”,
ACCUSED-APPELLANT.**

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

Appealed to Us is the Judgment[1] dated October 28, 2006 of the Regional Trial Court, Branch 25, Cagayan de Oro City, in Criminal Case No. 2004-287, finding accused-appellant Gilbert Ybañez y Cloma a.k.a. Bobong Quida guilty beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was formally charged and pleaded “not guilty”[2] under an Information[3] that reads:

The undersigned Assistant City Prosecutor accuses BOBONG QUIDA of the crime of VIOLATION OF SECTION 5, ARTICLE II, of Republic Act 9165, as amended, committed as follows:

That on January 09, 2004, at about 5:30 in the afternoon more or less, at Balongis, Balulang, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver, distribute and give away one (1) small heat sealed transparent plastic sachet containing 0.08 gram of methamphetamine hydrochloride (shabu), to a decoy/poseur buyer, in consideration of the amount of one (1) xxx hundred peso bill marked money with serial numbers CL445449, while the other members of the police unit were strategically located nearby, intently observing the consummation of the transaction, including the giving of marked money by the poseur buyer to the accused on a buy-bust operation, well knowing that it is a dangerous drug.

Contrary to and in violation of Section 5, paragraph 1, Article II of Republic Act 9165.

The evidence of the prosecution consisted of (1) the testimonies of PO2 Rustom Gines, PO2 Jimmy Vicente and PO2 Julius Saluta, and (2) Exhibits “A” to “E” with submarkings. The prosecution's version of events are as follows:

On January 9, 2004 in the morning, then Special Operation Unit of the Cagayan de Oro City Drug Enforcement Office (CDEU-SOU) received an information from a “confidential informant” that accused Gilbert Ybañez y Cloma a.k.a. Bobong Quida was rampantly selling shabu at Balongis, Brgy. Balulang, Cagayan de Oro City. On the basis of said information, the CDEU-SOU immediately decided to form a composite team for the conduct of surveillance and a buy-bust operation against accused. Consequently, the composite team were PO1 Jimmy Vicente, PO2 Julius Saluta and PO2 Rustom Gines headed by SPO1 Mario Pelaez.[4] After confirming the veracity of the information provided by the confidential informant, the composite team with their confidential informant proceeded to the target area on board a tinted L-300 van and motorcycle.[5] The confidential informant was tasked as the poseur-buyer equipped with a P100.00 bill buy-bust money with serial number SN CL445449,[6] while the police officers acted as members and back-up.

Arriving thereat, the composite team discreetly positioned themselves near the target area. Afterwards, the confidential informant alighted from the car and approached the accused.[7] From a distance of 10 meters away from the accused, the composite team positively saw the transaction between the confidential informant and the accused. The confidential informant handed the P100.00 bill marked money to the accused who in turn gave the confidential informant a small heat-sealed transparent plastic sachet containing white crystalline substance suspected of "shabu".[8]

Upon consummation of the sale, the confidential informant left the place but as the composite team were set to apprehend accused, another person identified later as Russel Generalao, bought one sachet from the accused. Seeing this, the composite team rushed to the locus criminis and simultaneously introduced themselves as police officers. However, accused and Generalao immediately fled and flagged down a taxicab. The composite team chased them but they were able to apprehend Generalao, while accused was able to escape.[9] The buy bust money was not recovered.[10]

Subsequently, the one small heat-sealed transparent plastic sachet containing white crystalline substance sold by accused to the confidential informant was turned over by the latter to PO2 Rustom Gines at Cogon Police Station after the consummation of the sale transaction. The item seized was marked by PO2 Gines as Exhibit "X-1" and was subjected to a laboratory examination on the same day.[11] In her Chemistry Report No. D-21-2004,[12] forensic chemist PSI April Garcia Carbajal of the PNP Crime Laboratory found that the subject crystalline substance is positive for methamphetamine hydrochloride or "shabu." Consequently, accused was charged with violation of Section 5, Paragraph 1, Article II of RA 9165.

Accused was later arrested in another police operation.

The defense, on the other hand, presented Gilbert Ybañez y Cloma a.k.a. Bobong Quida, the accused himself. For his part, accused denied that he was caught selling shabu and claimed that the evidence against him was fabricated. Accused's version, as summarized by the RTC, is as follows:

"The accused admits he is Bobong Quida [and] reiterates his innocence. There was no buy-bust operation[.] [A]t the time of buy-bust operation[,] he was in Barangay 4, Cagayan de Oro City in their house with Sofia his live-in-partner. He was not selling any dangerous drugs. The evidence against him is planted and is inadmissible for being the fruit of the poisonous tree. He does not know Russel Generalao." [13]

After thorough study of the records, the trial court concluded that all the elements of the offense charged against the accused were satisfactorily proven by the prosecution. Thus, in its Judgment[14] dated October 28, 2006, the trial court held accused guilty beyond reasonable doubt of violation of Sections 5, Article II of Republic Act No. 9165. The trial court disposed of the case as follows:

In the light of the foregoing, this Court hereby renders judgment finding accused Gilbert Ybañez y Cloma a.k.a. Bobong Quida guilty beyond reasonable [doubt] of the crime charged in the information for selling and delivering without license or authority from the law a dangerous drug and sentences the accused to life imprisonment and imposes a fine of Three Hundred Thousand Pesos (P300,000.00) and to pay the cost.

The accused Gilbert Ybañez y Cloma a.k.a. Bobong Quida who has undergone preventive imprisonment shall be credited in the service of his sentence consisting of deprivation of liberty, with the full time during which he has undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except those disqualified by law.

The one (1) small heat-sealed transparent plastic sachet containing white crystalline substance or shabu weighing 0.08 gram is hereby confiscated and forfeited in favor of the government to be disposed of in accordance with law.

SO ORDERED.[15]

Accused-appellant raised the following assignment of errors:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE HEREIN ACCUSED-APPELLANT DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE GUILT OF THE ACCUSED-APPELLANT BEYOND REASONABLE DOUBT[.]

II

THE FINDINGS OF THE COURT A QUO ARE CONTRARY TO EXISTING JURISPRUDENCE[.][16]

The appeal must fail.

After a painstaking review of the records, this Court affirms the conviction of the appellant.

In a prosecution for the illegal sale of a prohibited drug, like shabu, the prosecution must prove the following elements: (1) the identity of the buyer, as well as the seller, the object and consideration of the sale; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the dangerous drugs seized as evidence.[17]

All these elements are present in the instant case. The testimony of PO2 Rustom Gines explicitly narrated how the sale transaction of shabu between the confidential informant and appellant occurred. The transaction started when the confidential informant, acting as poseur-buyer, approached the appellant. After the two conversed, the confidential informant handed over the P100.00 bill marked money to the appellant. Appellant received the buy-bust money, got and opened his wallet, took out therefrom one small heat-sealed transparent plastic sachet purporting to contain white crystalline substance, and handed it to the confidential informant who in turn accepted the same. The exchange of the buy-bust money and the small heat-sealed transparent plastic sachet containing white crystalline substance (which was later on confirmed as shabu per Chemistry Report No. D-21-2004) between the confidential informant and appellant indeed consummated the sale transaction. While on the witness stand, PO2 Gines positively identified appellant as the same person who sold the one small heat-sealed transparent plastic sachet of shabu to the confidential informant and to whom the confidential informant gave the marked money during the buy-bust operation.

PO2 Gines' testimony was candid, direct, spontaneous, and categorical that:

Q:

In that buy bust operation who was the team leader?

A:

It was SPO1 Mario Pelaez.

Q:

And who was the designated poseur[-]buyer?

A:

Our confidential informant, sir.

Q:

Who were the back up officers?

A:

PO2 Julius Saluta and PO3 Jimmy Vicente.

Q:

What mode of transportation did you take in going to Balongis?

A:

We used a[n] L-300 tinted van and a motorcycle.

Q:

What happened when you were already at Balongis?

A:

Our decoy disembarked the van and walked to the area and we continued riding in an strategic position.

Q:

And what happened while the poseur[-]buyer was walking towards the area?

A:

Gilbert Ybanez alias Bobong Yda made a transaction with our decoy.

Q:

What were they doing in that transaction?

A:

We saw our decoy handing the marked money P100.00 bill to Bobong Yda and I saw Bobong Yda pulled his wallet and got one small heat- sealed transparent plastic sachet containing white crystalline substance and gave it to our poseur-buyer/decoy.

Q:

And how about Gilbert Ybanez?

A:

Then we saw another person who transacted again to Bobong Yda. He bought also one sachet worth P100.00 from Bobong Yda.

xxx

Q: How far were you from the accused?

A: Almost 10 meters.[18]

xxx

Q:

Now, if that Bobong Yda, which is the subject of your buy bust operation is in Court, will you be able to identify him?

A:

Yes, sir.

Q:

Will you please go down and identify Bobong Yda.

A:

The first man on the first row, sir. (witness pointing to a person sitting inside the courtroom and who when asked of his name, answered Gilbert Ybañez)[19]

The testimony of PO2 Gines was fully corroborated by PO3 Jimmy Vicente, thus:

Q:

What was the reason why you were there at Balongis, Balulang?

A:

We conducted a buy-bust operation.

Q:

Against whom?

A:

Gilbert Ybañez a.k.a. "Bobong Quida"

Q:

And, in that buy-bust operation, who was your Team Leader?

A:

SPO1 Mario Pelaez.

Q:

And, who was designated as poseur-buyer?

A:

Our c.i..

Q:

And, who were your back-up force?

A:

PO2 Julius Saluta, PO2 Rustom Ginez and some others.

Q:

And, how about you? What was your role in that operation?

A:

I was the look out and back-up of our poseur- buyer.

Q:

And, will you tell the Honorable Court how did you go there? What mode of transportation did you use in going to Balongis?

A:

Some of my companions were riding our L-300 Van and PO2 Rustom Ginez and I rode on our motorcycle.

Q:

And, you mentioned that Police Officer Rustom Ginez and you rode on one motorcycle, What happened when you already arrived at Balongis?

A: We observed our poseur-buyer transacting with “Bobong Quida” .

Q:

And, what happened when your poseur-buyer transacted with “Bobong Quida”?

A:

We saw our poseur-buyer handed the P100.00 bill to “Bobong Quida” and “Bobong Quida” gave one (1) sachet of shabu.

Q:

To whom?

A:

To our poseur-buyer.

Q:

And, what happened after your poseur-buyer handed money to “Bobong Quida”?

A:

“Bobong Quida” gave one (1) sachet of shabu to our poseur-buyer.[20]

xxx

Q:

Now, you said that “Bobong Quida” was arrested; Would you be able to identify him?

A: Yes, sir.

Q: And, if that accused “Bobong Quida” is in court, can you point to him?

A: Yes sir.

Q: Will you go down and tap lightly the shoulder of “Bobong Quida”?

A:

(The witness went down from the witness stand and tap the left shoulder of a man seated on a bench inside the court room who when asked of his name stood up and answered that he is Gilbert Ybañez y Cloma alias “Bobong Quida”)

Q:

Now, the man whom you pointed to and you identified, Are you sure that he is “Bobong Quida” who was the subject of your buy- bust operation?

A:

Yes, Sir.

Q:

And, why do you say that he was really the one? What made you sure that he is Gilbert Ybañez y Cloma alias “Bobong Quida”?

A:

I really saw him when he transacted with our poseur-buyer and I was also able to hold him; only, he was able to extricate.[21]

The clear and positive testimony of PO2 Gines, corroborated by that of PO3 Vicente, is more than sufficient to prove that an illegal transaction or sale of shabu took place. PO3 Vicente was only fifteen (15) meters away from appellant and the confidential informant.[22] He was able to give a clear and consistent account of what transpired during the buy-bust operation.

In light of positive identification by PO2 Gines and the physical evidence, appellant's denial and alibi fail. Settled

is the rule that the defenses of denial and alibi are invariably viewed with disfavor because such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs.[23]

Clearly, the prosecution was able to sufficiently established appellant's guilt beyond reasonable doubt for the offense of illegal sale of shabu in violation of Section 5, Article II of Republic Act No. 9165.

Appellant contends, however, that his guilt has not been proven beyond reasonable doubt because the prosecution violated the chain of custody rule under Section 21, paragraph 1, Article II of RA No. 9165 when it failed to to make a physical inventory and to mark the drugs seized while still at the crime scene.

Section 21, paragraph 1, Article II of Republic Act No. 9165 provides:

Section 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; (emphasis ours)

The above provision is implemented by Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, viz.:

(a) 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: 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 and underlining ours)

Admittedly, in the case at bar, the confiscated shabu was not immediately marked and photographed at the crime scene, in violation of the above stated provisions. It must be stressed however that non-compliance with Section 21(1), Article II of RA No. 9165 is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.[24] Thus, in *People v. Resurreccion*,[25] the Supreme Court elucidated:

XXX

XXX

XXX

The failure to strictly comply with Sec. 21(1), Art. II of RA 9165 does not necessarily render an accused's

arrest illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as these would be utilized in the determination of the guilt or innocence of the accused. (emphasis supplied)

In the case at bar, the chain of custody of the shabu, the subject matter of the case, was shown not to have been broken. After the one small heat-sealed transparent plastic sachet was seized from the appellant, who fled from the crime scene, the same was turned over by the confidential informant to PO2 Gines at the Cogon Police Station. PO2 Gines immediately marked the one small heat-sealed transparent plastic sachet as Exhibit “X-1”. A request for laboratory examination of the seized item marked “X-1” was signed by SPO1 Mario P. Pelaez. The request and the marked item seized were received by the PNP Crime Laboratory Regional Office-10. Thereafter, the Forensic Chemical Officer of the Crime Laboratory, Police Senior Inspector April G. Carbajal issued Chemistry Report No. D-21-2004 confirming that the marked item seized from appellant was methylamphetamine hydrochloride or shabu, a dangerous drug. When the item seized was presented in court, PO2 Gines identified it to be same object seized from appellant during the buy-bust operation. Undoubtedly, the integrity of the illegal drugs seized from appellant was preserved.

Moreover, there was a cogent reason why the requirement prescribed under Section 21(1), Article II of RA No. 9165 was not complied with because appellant has escaped, thus, there was substantial compliance of the said provision.

As held in the case of *People v. Mantawil*,^[26] the Supreme Court said:

Appellants anchor their argument on the PAOCTF team’s failure to mark the confiscated shabu while they were still at the crime scene. This is, however, untenable. The buy-bust team’s failure to immediately mark the seized drugs will not automatically impair the integrity of the chain of custody as long as the integrity and evidentiary value of the seized items have been preserved. (emphasis supplied)

Furthermore, in *People v. Concepcion*,^[27] the Supreme Court ruled that:

After going over the evidence on record, we find that there, indeed, was a buy-bust operation involving appellants. The prosecution's failure to submit in evidence the required physical inventory of the seized drugs and the photograph pursuant to Section 21, Article II of Republic Act No. 9165 will not exonerate appellants. Non-compliance with said section is not fatal and will not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. What is of utmost importance 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. In the instant case, we find the integrity of the drugs seized intact. (emphasis and underlining ours)

The failure therefore of the apprehending officers in this case to make a physical inventory and to mark the drugs seized is not fatal because the prosecution was able to establish, with moral certainty, that the identity, integrity, and evidentiary value of the shabu was not jeopardized from the time of its seizure until it was presented in court.

We also find appellant's allegation that the confidential informant was not presented in court to testify on how the integrity of the drug confiscated untenable. It bears emphasizing that the non-presentation of the confidential informant is not fatal to the prosecution's cause. Informants are usually not presented in court because of the need to hide their identity and maintain their valuable service to the police.^[28] Besides, the testimony of the informant will merely be corroborative of the apprehending officers' testimonies.^[29]

At this juncture, it must be stressed that “prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Oft-repeated is the rule that in cases involving

violations of the Comprehensive Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Absent any indication that the police officers were ill-motivated in testifying against the accused, full credence should be given to their testimonies.”[30] Here, appellant failed to overcome this presumption.

We now go to the penalties imposed on appellant for selling shabu. The trial court imposed on appellant the penalty of life imprisonment and a fine of P300,000.00.

Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of P500,000.00 to P10,000,000.00. The statute, in prescribing the range of penalties imposable, does not concern itself with the amount of dangerous drug sold by an accused. In light, however, of the effectivity of Republic Act No. 9346, the imposition of the supreme penalty of death has been proscribed.[31] Thus, the trial court correctly imposed the penalty of life imprisonment and fine. However, the fine to be imposed against appellant should be increased from P300,000.00 to P500,000.00.

All told, We find no reason to disturb the findings of the trial court. The settled rule is that conclusions and findings of fact of the trial court are entitled to great weight on appeal and should not be disturbed unless for strong and cogent reasons, because the trial court is in a better position to examine real evidence, as well as observe the demeanor of the witnesses while testifying in the case.[32]

WHEREFORE, premises considered, the appeal is DISMISSED. The Judgment dated October 28, 2006 of the Regional Trial Court, Branch 25, Cagayan de Oro City, in Criminal Case No. 2004-287 is hereby AFFIRMED with MODIFICATION. Accused-appellant Gilbert Ybañez y Cloma a.k.a. Bobong Quida is ORDERED to PAY FINE in the amount of P500,000.00.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified 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.

Brorja, J., Ch., and Badelles, JJ., concur.

[1] Rollo, p. 45

[2] Records, p. 19

[3] Records, p. 1

[4] Records, p. 4, Joint Affidavit.

[5] TSN, June 6, 2006, p. 4

[6] Ibid

[7] Ibid

[8] TSN, June 6, 2006, p. 5

[9] TSN, June 6, 2006, pp. 5-7

- [10] TSN, June 6, 2006, p. 11
- [11] TSN, June 6, 2006, p. 10
- [12] Records, p. 85
- [13] Rollo, p. 47
- [14] Supra at note 1
- [15] Rollo, p. 49
- [16] Rollo, p. 29
- [17] People v. Gratil, G.R. No. 182236, June 22, 2011
- [18] TSN, June 6, 2006, pp. 4-5
- [19] TSN, June 6, 2006, pp. 11-12
- [20] TSN, July 13, 2006, pp. 2-3
- [21] TSN, July 13, 2006, pp. 6-7
- [22] TSN, July 13, 2006, p. 9
- [23] People v. Domingcil, G.R. No. 140679, January 14, 2004
- [24] People v. Dela Rosa, G.R. No. 185166, January 26, 2011
- [25] G.R. No. 186380, October 12, 2009
- [26] G.R. No. 188319, June 8, 2011
- [27] G.R. No. 178876, June 27, 2008
- [28] Quinicot v. People, G.R. No. 179700, June 22, 2009.
- [29] *ilbid*
- [30] People v. Vicente, Jr., G.R. No. 188847, January 31, 2011
- [31] People v. Quiaoit, G.R. No. 175222, July 27, 2007
- [32] Golangco v. Court of Appeals, G..R. No. 124724, December 22, 1997

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