

ELPIDIO BONDAD, JR., Y BURAC, APPELLANT, VS. PEOPLE OF THE PHILIPPINES, APPELLEE.

G.R. No. 173804. December 10, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Elpidio Bondad, Jr., y Burac (appellant) was charged before the Regional Trial Court (RTC) of Marikina City[1] for violation of Section 5, paragraph 2(3), Article II of Republic Act No. 9165 (R.A. No. 9165) or the Comprehensive Dangerous Drugs Act of 2002, allegedly committed as follows:[2]

That on or about the 29[th] day of January 2004, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, feloniously and knowingly sell to poseur buyer 0.02 gram of Methamphetamine Hydrochloride (shabu) contained in one (1) heat-sealed transparent plastic sachet, a dangerous drug, in violation of the above-cited law.[3] (Underscoring supplied)

He was likewise charged for violation of Section 11, par. 2(3), Article II also of R.A. No. 9165, allegedly committed as follows:

That on or about the 29[th] day of January 2004, in the City of Marikina, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to possess or otherwise use any dangerous drugs, did then and there willfully, unlawfully and feloniously have in his possession direct custody and control 0.04 gram of white crystalline substance contained in two (2) heat-sealed plastic sachets which gave positive result to the test for Methamphetamine Hydrochloride (shabu), which is a dangerous drug, in violation of the above-cited law.[4] (Underscoring supplied)

The cases were lodged at Branch 272 of the RTC of Marikina.

From the evidence for the prosecution, particularly the testimony of its principal witness PO2 Edwin Dano and its documentary evidence, the following version is culled:

At around 7:05 p.m. of January 29, 2004, while PO2 Ferdinand Brubio, PO1 Christopher Anos, and PO1 Roberto Muega were at the Station Anti Illegal Drug Special Operations Task Force (SAIDSOTF), Office of the Marikina City Police Station, PO2 Nelson Arribay arrived together with a confidential informant. The confidential informant reported, among other things, about the rampant sale of shabu in a billiard hall along Bonifacio Avenue, Barangka, Marikina City and named a certain alias "Jun" as the vendor.

The Chief of the SAIDSOTF, P/Sr. Insp. Ramchrisen Haveria, Jr., at once formed a buy-bust team composed of, among others, PO2 Ramiel Soriano and PO2 Dano who was designated as the poseur-buyer. PO2 Dano was given a one hundred peso bill bearing Serial No. Q487945 to be used as buy-bust money. It was agreed that PO2 Dano's removal of his cap would signal that the buy-bust was consummated.

The conduct of a buy-bust operation was recorded in the police blotter and was coordinated with the Philippine

Drug Enforcement Agency (PDEA) which gave it control number NOC-012904-28.

The buy-bust team, together with the confidential informant, proceeded to 3 C's billiard hall at the corner of M. Cruz St. and Bonifacio Avenue in Barangka, Marikina City. On entering the hall, the confidential informant pointed to appellant who was then holding a cue stick beside the billiard table as the alias "Jun." The confidential informant approached appellant and talked to him. Within minutes, appellant approached PO2 Dano and asked him if he wanted to buy shabu, to which PO2 Dano answered "piso lang." Appellant at once took out a "Vicks" container from his right front pocket[5] which, when opened, yielded heat-sealed plastic sachets containing substances suspected to be shabu. From the container, appellant drew out one sachet in exchange for which PO2 Dano gave the marked one hundred peso bill. At that instant, PO2 Dano removed his cap.

As the back-up police officers were closing-in, PO2 Dano grabbed appellant's arm, identified himself, and apprised appellant of his constitutional rights. Upon PO2 Dano's order, appellant returned the buy-bust money, handed the "Vicks" container, and gave his name as Elpidio Burac Bondad, Jr.

Still at the place of arrest, PO2 Dano placed the markings "EBB-ED BUYBUST 01/29/04" on the substance-filled sachet sold to him, and "EBB-ED, POS 1 and 2, 01/29/04" on the sachets that remained inside the "Vicks" container.

The buy-bust team thereupon brought appellant and the seized items to the Marikina City Police Station where a memorandum dated January 29, 2004[6] was prepared by P/Sr. Insp. Chief Haveria, Jr., addressed to the Chief of the Eastern Police District Crime Laboratory Office, requesting for the conduct of laboratory examination on the seized items to determine the presence of dangerous drugs and their weight. PO2 Dano also requested that appellant be subjected to a drug test.[7]

The following day or on January 30, 2004, at 3:00 P.M., upon receipt of three sachets, a laboratory examination was conducted thereon by Police Senior Inspector Annalee R. Forro, Forensic Chemical Officer of the Eastern Police District Crime Laboratory Office, who, in Physical Science Report No. D-0094-04E[8], recorded, among other things, the specimen submitted, her findings and conclusion as follows:

SPECIMEN SUBMITTED:

Three (3) heat-sealed transparent plastic sachets with markings marked as A through C respectively, each containing white crystalline substance with following recorded net weights and markings:

A = 0.02 gram "EBB-ED BUYBUST 01/29/04"

B = 0.02 gram "EBB-ED POSS 1 01/29/04"

C = 0.02 gram "EBB-ED POSS 2 01/29/04"

x-x-x x-x-x x-x-x

F I N D I N G S: x x x

Qualitative examination conducted on the above-stated specimen gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug.

x-x-x x-x-x x-x-x

C O N C L U S I O N:

Specimens A through C contain Methamphetamine Hydrochloride, a dangerous drug.[9] (*Italics and emphasis in the original*)

Denying the charges against him, appellant, a former police officer, claimed that he was framed up and gave the following version:

On January 29, 2004, while he was playing inside 3 C's billiard hall, PO2 Brubio, whom he knew was a policeman, entered the billiard hall. After greeting PO2 Brubio in Bicolano, he continued playing but PO2 Brubio suddenly handcuffed him and asked him "Sumama ka muna." Another person who was at his back pushed him out of the billiard hall in the course of which he felt PO2 Brubio reaching his (appellant's) right front pocket,[10] drawing him to restrain the hand of PO2 Brubio, telling him "pera ko yan!"

Aware that his son was inside the billiard hall, appellant summoned and handed him his wallet containing P2,000. PO2 Brubio, however, took the wallet from his son, telling him "Huwag ka makialam dito." He was then made to board a car and taken to the Office of the SAIDSOTF at the police station.

Appellant's defense was corroborated by his son Christian Jeffrey C. Bondad, and Roberto U. Mata who was a "spotter" (referee) at the billiard hall at the time appellant was arrested.

Finding for the prosecution, the trial court convicted appellant in both charges, disposing as follows:

WHEREFORE, foregoing premises considered, the Court finds the accused ELPIDIO BONDAD, JR. y BURAC guilty beyond reasonable doubt of the crime of Violation of Sec. 11 par. 2(3), Art. II of R.A. 9165 and is sentenced to suffer the penalty of imprisonment for a period of TWELVE (12) YEARS and ONE (1) DAY and to pay the fine of THREE HUNDRED THOUSAND PESOS (PhP300,000.00) as provided for in Sec. 11 par. 2(3), Art. II of RA 9165. The accused is likewise found guilty of the crime of Violation of Sec. 5 Art. II of RA 9165 and is sentenced to suffer the penalty of LIFE IMPRISONMENT and fine of FIVE HUNDRED THOUSAND PESOS (PhP500,00.00) pursuant to Sec. 5, Art. II of RA 9165 the methamphetamine hydrochloride (shabu) is ordered confiscated in favor of the government for proper destruction by the proper agency.

SO ORDERED.[11] (Underscoring supplied)

By Decision of February 8, 2006,[12] the Court of Appeals affirmed the trial court's decision with modification, disposing as follows:

WHEREFORE, in the light of the foregoing, the appeal is DISMISSED for lack of merit. The assailed decision is AFFIRMED with the MODIFICATION that the accused-appellant is sentenced to suffer an indeterminate penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum and to pay a fine of Three Hundred Thousand Pesos (P300,000.00).

SO ORDERED.[13] (Underscoring supplied)

Specifically with respect to the charge of possession of shabu, the appellate court held:

The evidence for the prosecution fully proved beyond reasonable doubt the elements necessary to successfully prosecute a case for illegal possession of a prohibited drug, namely, (a) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug, (b) such possession is not authorized by law and (c) the accused freely and consciously possessed said drug.

Under Section 11, Par. 2[3] of R.A. 9165, the mere act of possessing any dangerous drug consummates the crime. There is no doubt that the charge of illegal possession of shabu was proven beyond reasonable doubt since the accused-appellant knowingly possessed plastic sachets with white crystalline granules, without legal authority at the time he was caught during the buy-bust operation. The white crystalline granules found in his possession, upon laboratory examination, were positively identified as methamphetamine hydrochloride or shabu, a dangerous drug.[14] (*Italics in the original, underscoring supplied*)

Hence, the present Petition for Review on Certiorari, appellant faulting the appellate court:

- . . . IN CONVICTING [HIM] OF THE CRIME[S] CHARGED ON THE BASIS OF THE LONE TESTIMONY OF THE POSEUR BUYER AS AGAINST THE CORROBORATED STATEMENTS OF THE ACCUSED AND HIS WITNESSES;
- . . . IN ADMITTING THE EVIDENCE OF THE PROSECUTION DESPITE CLEAR VIOLATION OF SECTION 21 (1) OF R.A. 9165;
- . . . IN COMPLETELY DISREGARDING THE CLEAR EVIDENCE ON THE EXISTENCE OF IRREGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS BY POLICE OFFICER/S IN THE CONDUCT OF THE BUY BUST OPERATIONS.[15] (Emphasis and underscoring supplied)

As the resolution of the second assignment of error is determinative of whether there is still necessity of segueing to the first and third assignments of error, it shall early on be passed upon.

Appellant claims that there was failure to follow the requirements of Sec. 21 of R.A. No. 9165, hence, it compromised the integrity and evidentiary value of the allegedly seized items.

Sec. 21 of R.A. 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 or 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 persons/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; x x x (Emphasis and underscoring supplied)

Appellant claims that no physical inventory and photographing of the drugs took place. A reading of the testimony of the poseur-buyer, PO2 Dano indeed confirms appellant's claim, viz:

Atty. Puentebella:

When you brought him to the police, it was there that the items taken from him were inventoried, is it not?

Witness:

We did not make inventory because we simply brought the evidence confiscated.

x x x x

Atty. Puentebella:

You also did not take photographs of the items taken from the accused?

Witness:

Yes, sir.

Atty. Puentebella:

And you know for a fact that under the new drugs law, this is a requirement for the apprehending team to do, is it not?

Pros. Gapuzan:

Counsel is asking for a conclusion of law. I will object.

Court:

Witness may answer the question.

Witness:

Yes, sir.

x x x x

Atty. Puentebella:

So it is very clear now Mr. Witness that at the time you apprehended the accused, you did not make an inventory in the presence of the accused nor you did not [sic] make a photograph of the items seized in the presence of the accused, an elective official, a representative from the Department of Justice, or the media, that's very clear?

Witness:

Yes, sir.

Atty. Puentebella:

Since you did not make any inventory, it follows that you did not require them to sign your inventory as required by law?

Witness:

Yes, sir.[16] (Emphasis and underscoring supplied)

Clearly then, the apprehending police officers failed to comply with the above-quoted provision of Section 21 of R.A. No. 9165.

People v. Pringas holds, however:

Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefor, and as long as the integrity and the evidentiary value of the confiscated/seized items, are properly preserved by the apprehending officer/team. Its non-compliance 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.[17] (Citation omitted, emphasis, italics and underscoring supplied)

The Court's pronouncement in Pringas is based on the provision of Section 21(a) of the Implementing Rules and Regulations[18] of R.A. No. 9165, viz:

x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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 underscoring supplied)

In the present case, by PO2 Dano's claim, he immediately marked the seized items which were brought to the

Crime Laboratory for examination. By his admission, however, he did not conduct an inventory of the items seized. Worse, no photograph of the items was taken. There was thus failure to faithfully follow the requirements of the law.

Parenthetically, unlike in *Pringas*, the defense in the present case questioned early on, during the cross examination of PO2 Dano, the failure of the apprehending officers to comply with the inventory and photographing requirements of Section 21 of R.A. No. 9165[19], despite PO2 Dano's awareness of such requirements. And the defense raised it again during the offer of evidence by the prosecution, thus:

Atty. Puentebella:

x x x x

Exhibits "B" which is the brown envelope, "B-1", "B-2" and "B-3" are objected to for being product of irregular functions of police and therefore fruit of poisonous thinking [sic] and they are not admissible and they were not photographed in the presence of the accused as provided for by Sec. 21, par.1, R.A. 9165;[20] (emphasis supplied)

IN FINE, as the failure to comply with the aforesaid requirements of the law compromised the identity of the items seized, which is the corpus delicti of each of the crimes charged against appellant,[21] his acquittal is in order.

This leaves it unnecessary to still dwell on the first and third assignments of error.

WHEREFORE, the Petition is GRANTED. The assailed decision is REVERSED and SET ASIDE and appellant, Elpidio Bondad Jr., y Burac, is ACQUITED of the crimes charged.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is directed to cause the immediate release of appellant unless he is being lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice hereof.

SO ORDERED.

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, pp. 73-74.

[2] Records, p. 2.

[3] Records, p. 2 - Information dated February 2, 2004.

[4] Id. at p. 6.

[5] No specification if it was a pocket of the shirt or of the pants.

[6] Id. at p. 15

[7] TSN, June 15, 2004, p. 41

[8] Records, p. 17

[9] Exhibit "C", folder of exhibits, p. 2

[10] There is also no specification if it was a pocket of the shirt or the pants

[11] CA rollo, p. 124.

[12] Penned by Justice Amelita G. Tolentino with the concurrence of Justices Portia Aliño Hormachuelos and Vicente S.E. Veloso, CA rollo, pp. 232-254.

[13] Rollo, p. 68.

[14] Id. at p. 66 (citations omitted)..

[15] Id at pp. 18-19.

[16] TSN, June 15, 2004, pp. 80-87.

[17] G.R. No. 175928. August 31, 2007, 531 SCRA 828, 842-843

[18] Took effect on November 27, 2002.

[19] Vide TSN, June 15, 2004, pp. 81-85.

[20] TSN, August 10, 2004, pp. 6-7.

[21] People v. Laxa, 414 Phil. 156, 170 (2001) citing People v. Rigodon, 238 SCRA 27 (1994).

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