

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORBERTO DEL MONTE Y GAPAY @ OBET, ACCUSED-APPELLANT.

G.R. No. 179940. April 23, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed before Us is the Decision[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02070 dated 28 May 2007 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 78, in Criminal Case No. 3437-M-02, finding accused-appellant Norberto del Monte, a.k.a. Obet, guilty of violation of Section 5,[3] Article II of Republic Act No. 9165, otherwise known as "Comprehensive Dangerous Drugs Act of 2002."

On 11 December 2002, accused-appellant was charged with Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002. The accusatory portion of the information reads:

That on or about the 10[th] day of December 2002, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there wilfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine Hydrochloride weighing 0.290 gram.[4]

The case was raffled to Branch 78 of the RTC of Malolos, Bulacan and docketed as Criminal Case No. 3437-M-02.

When arraigned on 20 January 2003, appellant, assisted by counsel de oficio, pleaded "Not Guilty" to the charge.[5] On 17 February 2003, the pre-trial conference was concluded.[6] Thereafter, trial on the merits ensued.

The prosecution presented as its lone witness PO1 Gaudencio M. Tolentino, Jr., the poseur-buyer in the buy-bust operation conducted against appellant, and a member of the Philippine National Police (PNP) assigned with the Philippine Drug Enforcement Agency (PDEA) Regional Office 3/Special Enforcement Unit (SEU) stationed at the Field Office, Barangay Tarcan, Baliuag, Bulacan.

The version of the prosecution is as follows:

On 10 December 2002, at around 3:00 o'clock in the afternoon, a confidential informant went to the office of the PDEA SEU in Barangay Tarcan, Baliuag, Bulacan and reported that appellant was selling shabu. Upon receipt of said information, a briefing on a buy-bust operation against appellant was conducted. The team was composed of SPO2 Hashim S. Maung, as team leader, PO1 Gaudencio Tolentino, Jr. as the poseur-buyer, and PO1 Antonio Barreras as back-up operative. After the briefing, the team, together with the confidential informant, proceeded to Poblacion Dike for the execution of the buy-bust operation.

When the team arrived at appellant's place, they saw the appellant standing alone in front of the gate. The

informant and PO1 Tolentino approached appellant. The informant introduced PO1 Tolentino to appellant as his friend, saying "Barkada ko, user." PO1 Tolentino gave appellant P300.00 consisting of three marked P100 bills.[7] The bills were marked with "GT JR," PO1 Tolentino's initials. Upon receiving the P300.00, appellant took out a plastic sachet from his pocket and handed it over to PO1 Tolentino. As a pre-arranged signal, PO1 Tolentino lit a cigarette signifying that the sale had been consummated. PO1 Barreras arrived, arrested appellant and recovered from the latter the marked money.

The white crystalline substance[8] in the plastic sachet which was sold to PO1 Tolentino was forwarded to PNP Regional Crime Laboratory Office 3, Malolos, Bulacan, for laboratory examination to determine the presence of the any dangerous drug. The request for laboratory examination was signed by SPO2 Maung.[9] Per Chemistry Report No. D-728-2002,[10] the substance bought from appellant was positive for methamphetamine hydrochloride, a dangerous drug.

The testimony of Nellson Cruz Sta. Maria, Forensic Chemical Officer who examined the substance bought from appellant, was dispensed after both prosecution and defense stipulated that the witness will merely testify on the fact that the drugs subject matter of this case was forwarded to their office for laboratory examination and that laboratory examination was indeed conducted and the result was positive for methamphetamine hydrochloride.[11]

For the defense, the appellant took the witness stand, together with his common-law wife, Amelia Mendoza; and nephew, Alejandro Lim.

From their collective testimonies, the defense version goes like this:

On 10 December 2002, appellant was sleeping in his sister's house in Poblacion Dike when a commotion woke him up. His nephew, Alejandro Lim, was shouting because the latter, together with appellant's common-law wife, Amelia Mendoza, and a niece, was being punched and kicked by several police officers. When appellant tried to pacify the policemen and ask them why they were beating up his common-law wife and other relatives, the policemen arrested him, mauled him, punched him on the chest, slapped him and hit him with a palo-palo. He sustained swollen face, lips and tooth. His common-law wife was likewise hit on the chest with the palo-palo.

The policemen then took appellant and his common-law wife to a house located in the middle of a field where the former demanded P15,000.00 for their liberty. The next day, appellant was brought to the police station.

Amelia Mendoza identified PO1 Tolentino and PO1 Barreras as the police officers who manhandled them and who demanded P15,000.00 so that she and appellant could go home. The following day at 6:00 a.m., she said her child and cousin arrived with the P15,000.00. She was released but appellant was detained. She does not know why the police officers filed this case against appellant. What she knows is that they were asking money from them.

Alejandro Lim merely corroborated the testimonies of appellant and Amelia Mendoza.

On 8 March 2004, the trial court rendered its decision convicting appellant of Violation of Section 5, Article II of Republic Act No. 9165, and sentenced him to life imprisonment and to pay a fine of P5,000,000.00. The dispositive portion of the decision reads:

WHEREFORE, the foregoing considered, this Court hereby finds accused Norberto del Monte y Gapay @ Obet GUILTY beyond reasonable doubt of the offense of Violation of Section 5, Art. II of R.A. 9165 and sentences him to suffer the penalty of LIFE IMPRISONMENT and a fine of P5,000,000.00. With cost.

The drugs subject matter of this case is hereby ordered forfeited in favor of the government. The Branch of this

Court is directed to turn over the same to the Dangerous Drugs Board within ten (10) days from receipt hereof for proper disposal thereof.[12]

The trial court found the lone testimony of PO1 Gaudencio M. Tolentino, Jr. to be credible and straightforward. It established the fact that appellant was caught selling shabu during an entrapment operation conducted on 10 December 2002. Appellant was identified as the person from whom PO1 Tolentino bought P300.00 worth of shabu as confirmed by Chemistry Report No. D-728-2002. On the other hand, the trial court was not convinced by appellant's defense of frame-up and denial. Appellant failed to substantiate his claims that he was merely sleeping and was awakened by the screams of his relatives who were being mauled by the police officers.

Appellant filed a Notice of Appeal on 10 March 2004.[13] With the filing thereof, the trial court directed the immediate transmittal of the entire records of the case to us.[14] However, pursuant to our ruling in *People v. Mateo*,^[15] the case was remanded to the Court of Appeals for appropriate action and disposition.[16]

On 28 May 2007, the Court of Appeals affirmed the trial court's decision but reduced the fine imposed on appellant to P500,000.00. It disposed of the case as follows:

WHEREFORE, the appeal is DISMISSED and the decision dated March 8, 2004 of the RTC, Branch 78, Malolos, Bulacan, in Criminal Case No. 3437-M-02, finding accused-appellant Norberto del Monte guilty beyond reasonable doubt of Violation of Section 5, Article II, Republic Act No. 9165, and sentencing him to suffer the penalty of life imprisonment is AFFIRMED with the MODIFICATION that the amount of fine imposed upon him is reduced from P5,000,000.00 to P500,000.00.[17]

A Notice of Appeal having been timely filed by appellant, the Court of Appeals forwarded the records of the case to us for further review.[18]

In our Resolution^[19] dated 10 December 2007, the parties were notified that they may file their respective supplemental briefs, if they so desired, within 30 days from notice. Both appellant and appellee opted not to file a supplemental brief on the ground they had exhaustively argued all the relevant issues in their respective briefs and the filing of a supplemental brief would only contain a repetition of the arguments already discussed therein.

Appellant makes a lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSE CHARGED DESPITE THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM FOR FAILURE OF THE ARRESTING OFFICERS TO COMPLY WITH SECTION 21 OF R.A. 9165.[20]

Appellant anchors his appeal on the arresting policemen's failure to strictly comply with Section 21 of Republic Act No. 9165. He claims that pictures of him together with the alleged confiscated shabu were not taken immediately upon his arrest as shown by the testimony of the lone prosecution witness. He adds that PO1 Tolentino and PO1 Antonio Barreras, the police officers who had initial custody of the drug allegedly seized and confiscated, did not conduct a physical inventory of the same in his presence as shown by their joint affidavit of arrest. Their failure to abide by said section casts doubt on both his arrest and the admissibility of the evidence adduced against him.

At the outset, it must be stated that appellant raised the police officers' alleged non-compliance with Section 21^[21] of Republic Act No. 9165 for the first time on appeal. This, he cannot do. It is too late in the day for him to do so. In *People v. Sta. Maria*^[22] in which the very same issue was raised, we ruled:

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed,

the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal. (Emphases supplied.)

In *People v. Pringas*,^[23] we explained that non-compliance with Section 21 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 case at bar, appellant never questioned the custody and disposition of the drug that was taken from him. In fact, he stipulated that the drug subject matter of this case was forwarded to PNP Regional Crime Laboratory Office 3, Malolos, Bulacan for laboratory examination which examination gave positive result for methamphetamine hydrochloride, a dangerous drug. We thus find the integrity and the evidentiary value of the drug seized from appellant not to have been compromised.

We would like to add that non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will accorded it by the courts. One example is that provided in Section 31 of Rule 132 of the Rules of Court wherein a party producing a document as genuine which has been altered and appears to be altered after its execution, in a part material to the question in dispute, must account for the alteration. His failure to do so shall make the document inadmissible in evidence. This is clearly provided for in the rules.

We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight - evidentiary merit or probative value - to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.

The elements necessary for the prosecution of illegal sale of drugs are (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.^[24] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of corpus delicti.^[25]

All these elements have been shown in the instant case. The prosecution clearly showed that the sale of the drugs actually happened and that the shabu subject of the sale was brought and identified in court. The poseur buyer positively identified appellant as the seller of the shabu. Per Chemistry Report No. D-728-2002 of Forensic Chemical Officer Nellson Cruz Sta. Maria, the substance, weighing 0.290 gram, which was bought by PO1 Tolentino from appellant in consideration of P300.00, was examined and found to be methamphetamine hydrochloride (shabu).

In the case before us, we find the testimony of the poseur-buyer, together with the dangerous drug taken from appellant, more than sufficient to prove the crime charged. Considering that this Court has access only to the cold and impersonal records of the proceedings, it generally relies upon the assessment of the trial court, which had the distinct advantage of observing the conduct and demeanor of the witnesses during trial. It is a fundamental rule that findings of the trial courts which are factual in nature and which involve credibility are accorded respect

when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses having heard their testimonies and observed their deportment and manner of testifying during the trial.[26]

The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[27] Finding no compelling reason to depart from the findings of both the trial court and the Court of Appeals, we affirm their findings.

Appellant denies selling shabu to the poseur-buyer insisting that he was framed, the evidence against him being "planted," and that the police officers were exacting P15,000.00 from him.

In the case at bar, the evidence clearly shows that appellant was the subject of a buy-bust operation. Having been caught in flagrante delicto, his identity as seller of the shabu can no longer be doubted. Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.[28] Frame-up, like alibi, is generally viewed with caution by this Court, because it is easy to contrive and difficult to disprove. Moreover, it is a common and standard line of defense in prosecutions of violations of the Dangerous Drugs Act.[29] For this claim to prosper, the defense must adduce clear and convincing evidence to overcome the presumption that government officials have performed their duties in a regular and proper manner.[30] This, appellant failed to do. The presumption remained un rebutted because the defense failed to present clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive.

The presentation of his common-law wife, Amelia Mendoza, and his nephew, Alejandro Lim, to support his claims fails to sway. We find both witnesses not to be credible. Their testimonies are suspect and cannot be given credence without clear and convincing evidence. Their claims, as well as that of appellant, that they were maltreated and suffered injuries remain unsubstantiated. As found by the trial court:

The accused, on the other hand, in an effort to exculpate himself from liability raised the defense of frame-up. He alleged that at the time of the alleged buy bust he was merely sleeping at the house of his sister. That he was awakened by the yells and screams of his relatives as they were being mauled by the police officers. However, this Court is not convinced. Accused failed to substantiate these claims of maltreatment even in the face of his wife's and nephew's testimony. No evidence was presented to prove the same other than their self-serving claims.[31]

Moreover, we agree with the observation of the Office of the Solicitor General that the witnesses for the defense cannot even agree on what time the arresting policemen allegedly arrived in their house. It explained:

To elaborate, appellant testified that it was 3 o'clock in the afternoon of December 10, 2002 when he was roused from his sleep by the policemen who barged into the house of his sister (TSN, July 7, 2003, p. 2). His common-law wife, however, testified that it was 10-11 o'clock in the morning when the policemen came to the house (TSN, Oct. 13, 2003, p. 6). On the other hand, Alejandro Lim testified that he went to sleep at 11 o'clock in the morning and it was 10 o'clock in the morning when the policemen arrived (TSN, Feb.2, 2004, p. 6). He thus tried to depict an absurd situation that the policemen arrived first before he went to sleep with appellant.[32]

Having established beyond reasonable doubt all the elements constituting the illegal sale of drugs, we are constrained to uphold appellant's conviction.

The sale of shabu is penalized under Section 5, Article II of Republic Act No. 9165. Said section reads:

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.

Under said law, 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. For selling 0.290 gram of shabu to PO1 Tolentino, and there being no modifying circumstance alleged in the information, the trial court, as sustained by the Court of Appeals, correctly imposed the penalty of life imprisonment in accordance with Article 63(2)[33] of the Revised Penal Code.

As regards the fine to be imposed on appellant, the trial court pegged the fine at P5,000,000.00 which the Court of Appeals reduced to P500,000.00. Both amounts are within the range provided for by law but the amount imposed by the Court of Appeals, considering the quantity of the drugs involved, is more appropriate.

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02070 dated 28 May 2007, sustaining the conviction of appellant Norberto Del Monte, a.k.a. Obet, for violation of Section 5, Article II of Republic Act No. 9165, is hereby AFFIRMED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Martin S. Villarama, Jr. and Arturo G. Tayag, concurring. Rollo, pp. 93-105.

[2] Records, pp. 112-116.

[3] Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

[4] Records, p. 2.

[5] Id. at 11.

[6] Id. at 17.

[7] Exhs. D, D-1 and D-2; records, p. 62.

[8] Exh. B; id. at 61.

[9] Exh. A; id. at 60.

[10] Exh. C; id. at 61.

[11] TSN, 16 June 2003, p. 10.

[12] Records, p. 116.

[13] Id. at 119.

[14] Id. at 121.

[15] G.R. Nos. 147678-87, 7 July 2004, 433 SCRA 640.

[16] Rollo, p. 62.

[17]Id. at 104.

[18] Id. at 111.

[19]Id. at 19.

[20]Id. at 73-74.

[21] 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.

[22] G.R. No. 171019, 23 February 2007, 516 SCRA 621, 633-634.

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

[24] People v. Adam, 459 Phil. 676, 684 (2003).

[25]People v. Nicolas, G.R. No. 170234, 8 February 2007, 515 SCRA 187, 198.

[26] People v. Julian-Fernandez, 423 Phil. 895, 910 (2001).

[27] People v. Cabugatan, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 547.

[28]People v. Sy, G.R. No. 171397, 27 September 2006, 503 SCRA 772, 783.

[29] People v. Eugenio, G.R. No. 146805, 16 January 2003, 395 SCRA 317, 323.

[30]People v. Zheng Bai Hui, 393 Phil. 68, 138 (2000).

[31]Rollo, p. 57.

[32] Id. at 81-82.

[33] ART. 63. Rules for the application of indivisible penalties.

x x x x

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

x x x x

2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

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