

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCOS SABADLAB Y NARCISO @ "BONG PANGO," ACCUSED-APPELLANT.

G.R. No. 186392. January 18, 2012

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

This is an appeal assailing the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 02690 dated July 31, 2008, which affirmed the Decision[2] of the Regional Trial Court (RTC) of Makati convicting accused-appellant Marcos Sabadlab y Narciso of violation of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

On September 22, 2006, accused-appellant was charged with violation of Sections 5 and 11 of Republic Act No. 9165, as follows:

CRIMINAL CASE NO. 06-1837:

The undersigned Prosecutor accuses MARCOS SABADLAB y NARCISO @ "BONG PANGO" of the crime of Violation of Section 5 of R.A. 9165, committed as follows:

That on or about the 21[st] day of September, 2006, in the City of Makati, 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, distribute and transport Methylamphetamine Hydrochloride, weighing zero point zero two (0.02) gram, which is a dangerous drug, in consideration of five hundred [sic] (Php300.00) pesos, in violation of the above-cited law.[3]

CRIMINAL CASE NO. 06-1838:

The undersigned Prosecutor accuses MARCOS SABADLAB y NARCISO @ "BONG PANGO" of the crime of Violation of Section 11 of R.A. 9165, committed as follows:

That on or about the 21[st] day of September, 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control Methylamphetamine Hydrochloride (Shabu) weighing zero point zero two (0.02) gram, which is a dangerous drug, in violation of the above-cited law.[4]

Trial ensued, during which the prosecution presented Police Officer (PO) 3 Eusebio Lowaton, Jr. (PO3 Lowaton) and Makati Anti-Drug Abuse Council (MADAC) Operative Miguel Castillo (MADAC Castillo).

PO3 Lowaton, a police officer in the Makati Central Police Station assigned to the Station Anti-Illegal Drugs-Special Operation Task Force (SAID-SOTF), testified that at around 9:00 a.m. on September 21, 2006, an informant came to their office, together with operatives from the MADAC. The informant and the operatives

reported that a certain "Bong" was engaged in delivering and selling shabu. The informant told PO3 Lowaton that he personally bought shabu from said "Bong." The SAID-SOTF officers went through their records and learned that said "Bong" had a previous record related to illegal drug activities. SAID-SOTF coordinated with the Philippine Drug Enforcement Agency (PDEA) through fax by sending a Pre-operational Report/Coordination Sheet, stating that it received information that one "Narciso Sabadlab" is engaged in illegal drug trade.[5] PDEA, in turn, sent SAID-SOTF a Certificate of Coordination[6] for an operation in Dapitan Street, Bgy. Guadalupe Nuevo, Makati City, with one "Narciso Sabadlab" as target. [7] A team composed of PO3 Lowaton and three other police officers, some MADAC operatives, and the informant, was formed to conduct a buy-bust operation. In preparation, the team leader marked three one hundred-peso bills to be used in the operation with the initials "ATS," standing for "Angel T. Sumulong." [8]

Before alighting at the area of the operation at Dapitan Street, Guadalupe Nuevo, Makati City, the informant told PO3 Lowaton that the person standing at the corner was their subject. The informant introduced PO3 Lowaton to accused-appellant as the buyer. The accused-appellant, who was carrying his son at the time,[9] asked PO3 Lowaton how much he was going to buy. PO3 Lowaton replied that he will buy P300.00 worth. The accused-appellant took a plastic sachet from his pocket and gave it to PO3 Lowaton. PO3 Lowaton handed P300.00 to accused-appellant. PO3 Lowaton reversed his cap to signal the completion of the transaction. He thereafter introduced himself as a police officer, arrested the accused-appellant, and informed him of his constitutional rights and nature of his arrest.[10]

PO3 Lowaton instructed his back-up MADAC personnel to conduct a body search on the accused-appellant. The P300 in marked money and another plastic sachet was recovered from the accused-appellant. PO3 Lowaton marked the sachet sold to him and the one recovered from the accused-appellant with "EBL-1" and "EBL-2," respectively.[11]

The accused-appellant was then brought to SAID-SOTF, while the two plastic sachets were turned over to the Scene of the Crime Operation (SOCO) for laboratory examination. PO3 Lowaton prepared an Acknowledgment Receipt[12] turning over the two plastic sachets, the marked money and another P60 recovered from accused-appellant to a certain PO2 Castillo.[13] The sachets marked EBL-1 and EBL-2 were forwarded to the PNP Crime Laboratory for laboratory examination.[14] Forensic Chemist Police Senior Inspector Abraham Verde Tecson prepared Physical Science Report No. D0649-06S reporting his finding that EBL-1 and EBL-2, each weighing 0.02 grams, gave positive results for methylamphetamine hydrochloride.[15] This report was admitted with no objection from the defense.[16]

MADAC Castillo, another member of the team that conducted the buy-bust operation, corroborated the testimony of PO3 Lowaton. MADAC Castillo testified that he, together with certain persons named PO3 Ruiz, PO2 Julius Lique, MADAC Dezer, MADAC Balote and MADAC Ruben Salandanan, acted as back-ups of PO3 Lowaton in the operation, which was led by a certain female police officer called Waje.[17] PO3 Lowaton acted as the poseur-buyer. While he was still around 20-25 meters away from the scene of the crime, MADAC Castillo observed that there was an "exchange of something." MADAC Castillo then saw PO3 Lowaton reversing his cap, so he went near the place of transaction, where he was ordered by PO3 Lowaton to conduct a body search on the accused-appellant. MADAC Castillo told accused-appellant to empty his pocket. When the accused-appellant refused to do so, MADAC Castillo frisked him and recovered a plastic sachet, the marked money worth P300.00 (three P100 bills), and another P60.00 (three P20 bills) in his front right pocket.[18]

Only the accused-appellant testified for the defense. According to the accused-appellant, he was arrested on September 21, 2006 by PO3 Lowaton and his men in front of his house in Dapitan Street, Guadalupe Nuevo, Makati City. He was with his three children at this time, the eldest of which was five years old. Eight to ten men

in civilian clothes alighted from their vehicle and were looking for a certain "Minyong." When he told them that he does not know said person, they started to force him to go with them. He asked them why they were taking him, but they did not reply and instead brought him to the SAID-SOTF office. In said office, he learned that he was being charged for drug peddling. He was forced to give a urine sample and was thereafter brought to the Ospital ng Makati.[19]

The accused-appellant testified that PO3 Lowaton had already previously arrested him and three others for playing cara y cruz on September 16, 2006 and was released when he paid PO3 Lowaton a total of P2,000.00. The accused-appellant denied the charges against him. His brother, Reymundo Sabadlab, his sister, Myrna Capco, and his wife, Edna Militar, are all undergoing trial for drug-related offenses.[20]

On December 8, 2006, the RTC rendered its Decision finding accused-appellant guilty. The dispositive portion of the Decision states:

WHEREFORE, it appearing that the guilt of accused MARCOS SABADLAB y NARCISO was proven beyond reasonable doubt, as principal, with no mitigating or aggravating circumstances, for violation [of] Section[s] 5 and 11, Article II of Republic Act 9165, he is hereby sentenced:

1. In Criminal Case No. 06-1837, to suffer life imprisonment and to pay a fine of P500,000.00;
2. In Criminal Case No. 06-1838, to suffer imprisonment for an indeterminate term of twelve [12] years and one [1] day, as minimum, to fourteen [14] years, and eight [8] months, as maximum, and to pay a fine of P300,000.00; and
3. To pay the costs.

Let the two [2] plastic sachets each containing 0.02 gram of Methylamphetamine Hydrochloride be turned over to the PDEA for proper disposition.[21]

Accused-appellant appealed. The case was raffled to the Thirteenth Division of the Court of Appeals and was docketed as CA-G.R. CR.-H.C. No. 02690.

On July 31, 2008, the Court of Appeals rendered its Decision affirming that of the RTC. Hence, the present recourse, where accused-appellant assigns the following errors:

I

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PROSECUTION WITNESSES.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT FOR VIOLATION OF SECTIONS 5 AND 11, ARTICLE II, R.A. NO. 9165.[22]

Whether accused-appellant's guilt was established beyond reasonable doubt

The accused-appellant denied ownership of the methylamphetamine hydrochloride allegedly recovered by the police officers in the operation. He claimed that there was no legitimate buy-bust operation since the pre-operation report from the Makati Police Station and the Certificate of Coordination from the PDEA did not carry his name and instead mentions a certain "Narciso Sabadlab." The accused-appellant argued that the prosecution was not able to establish that he and this Narciso Sabadlab were the same person. The accused-appellant added that the absence of a prior surveillance rendered suspect the genuineness of the alleged

buy-bust operation. Finally, accused-appellant asserted that it was contrary to human nature and experience for him to have carried his child while engaged in such nefarious activity.[23]

In the recent case of *People v. Tion*, [24] this Court had the opportunity to discuss the weight given to testimonies of members of buy-bust teams in drug-related cases:

Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit. Settled is the rule that in cases involving violations of the 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 suggesting ill motive on the part of the police officers or deviation from the regular performance of their duties. x x x.[25]

Similarly, in another case, "[w]e have invariably viewed with disfavor the defenses of denial and frame-up for such defenses can easily be fabricated and are common ploy in prosecutions for the illegal sale and possession of dangerous drugs. In order to prosper, such defenses must be proved with strong and convincing evidence." [26]

In the case at bar, accused-appellant failed to prove his allegation of denial and frame-up by strong and convincing evidence. He, in fact, presented no evidence to prove the same, and instead relied on the alleged irregularity in the buy-bust operation brought about by the inexact name mentioned in the Pre-operation Report from the Makati Police Station and the Certificate of Coordination from the PDEA. On this matter, the accused-appellant argued that the buy-bust operation was illegal as it was made without a close coordination with PDEA. The accused-appellant was apparently referring to Section 86 of Republic Act No. 9165, which provides:

Section 86. Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions. -- The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: Provided, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: Provided, however, That when the investigation being conducted by the NBI, PNP or any ad hoc anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: Provided, further, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters. (Emphasis supplied.)

As this Court held in *People v. Berdadero*, [27] the foregoing provision, as well as the Internal Rules and Regulations implementing the same, "is silent as to the consequences of the failure on the part of the law enforcers to seek the authority of the PDEA prior to conducting a buy-bust operation x x x. [T]his silence cannot be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal or evidence obtained pursuant to such an arrest inadmissible." [28] In the case at bar, even if we assume for the sake of

argument that Narciso Sabadlab and accused-appellant Marcos Sabadlab y Narciso alias Bong Pango could have been different persons, the established fact remains that it was accused-appellant who was caught in flagrante delicto by the buy-bust team. Following the aforementioned jurisprudence, even the lack of participation of PDEA would not make accused-appellant's arrest illegal or the evidence obtained pursuant thereto inadmissible.

Neither is prior surveillance a necessity for the validity of the buy-bust operation. Thus, in *People v. Padua*,^[29] this Court held:

A prior surveillance is not a prerequisite for the validity of an entrapment or buy-bust operation, the conduct of which has no rigid or textbook method. Flexibility is a trait of good police work. However the police carry out its entrapment operations, for as long as the rights of the accused have not been violated in the process, the courts will not pass on the wisdom thereof. The police officers may decide that time is of the essence and dispense with the need for prior surveillance.^[30]

As regards accused-appellant's allegation that he would not knowingly expose his son to peril by having him around while he is engaged in his drug peddling activity, suffice it to say that accused-appellant's testimony as to his own good moral character was self-serving and cannot be given credence.

In *People v. Doria*,^[31] this Court laid down the objective test in evaluating buy-bust operations:

We therefore stress that the "objective" test in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.^[32]

The testimony of PO3 Lowaton showed the complete details of the transaction: the initial contact between him and accused-appellant,^[33] the offer to purchase shabu,^[34] the delivery of the dangerous drug and payment with the marked money,^[35] and the eventual arrest of accused-appellant.^[36] We carefully examined said testimony and found ourselves in agreement with the Court of Appeals that the same was straightforward and clearly established the elements of the crime of illegal sale of drugs, namely: "(1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and payment therefor."^[37] Likewise, the testimony of PO3 Lowaton^[38] and MADAC Castillo^[39] as regards the sachet seized from accused-appellant also sufficiently established the elements of the crime of illegal possession of illegal drugs, which are: "(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; and (3) the accused freely and consciously possessed the said drug."^[40]

It is furthermore a fundamental rule that "the determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, is accorded full weight and credit as well as great respect, if not conclusive effect."^[41] The trial court, which had the opportunity to observe the demeanor of PO3 Lowaton and MADAC Castillo, on one hand, and accused-appellant, on the other, was in a better position than this Court to determine which of them is telling the truth.

Propriety of the penalty imposed

on accused- appellant

For the crime of illegal sale of a dangerous drug in Criminal Case No. 06-1837, the trial court imposed the penalty of life imprisonment and a fine of P500,000.00. This is correctly within the period and range of the imposable fine provided for in Section 5 of Republic Act No. 9165:

Section 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.

For the crime of illegal possession of a dangerous drug in Criminal Case No. 06-1838, the trial court imposed the penalty of imprisonment for an indeterminate term of twelve years and one day, as minimum, to fourteen years and eight months, as maximum, and a fine of P300,000.00. Section 11 of Republic Act No. 9165 provides:

Section 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:

x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "shabu";

x x x x

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

x x x x

(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.

The fine of P300,000.00 is clearly within the range of the imposable fine for possession of less than 5 grams of methamphetamine hydrochloride or shabu under Section 11. As regards the penalty of imprisonment, the Court should take into consideration the Indeterminate Sentence Law^[42] and provide for an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.^[43] The minimum (12 years and 1 day) and maximum (14 years and 8 months) of the indeterminate term imposed by the trial court are likewise correctly within the terms (12 years and 1 day to 20 years) prescribed under Section 11.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 02690 dated July 31, 2008 is hereby AFFIRMED.

SO ORDERED.

Corona, C.J., (Chairperson), Bersamin, Del Castillo, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 2-15; penned by Associate Justice Amelita G. Tolentino with Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr., concurring.

[2] CA rollo, pp. 41-45.

[3] Records, p. 2.

[4] Id. at 4.

[5] Id. at 12.

[6] Id. at 14.

[7] TSN, October 20, 2006, pp. 1-5; 13.

[8] Id. at 8-9.

[9] Id. at 18.

[10] Id. at 5-7.

[11] Id. at 7-8.

[12] Id. at 10.

[13] Records, p. 58, Exhibit J.

[14] Id. at 50, Exhibit C.

[15] Id. at 51, Exhibit D.

[16] Id. at 72.

[17] TSN, October 25, 2006, pp. 7-8.

[18] Id. at 4-9.

[19] TSN, November 15, 2006, pp. 2-6.

[20] Id. at 7-11.

[21] CA rollo, p. 45.

[22] Id. at 34.

[23] Id. at 35-37.

[24] *People v. Tion*, G.R. No. 172092, December 16, 2009, 608 SCRA 299.

[25] Id. at 316-317.

[26] *People v. Gonzaga*, G.R. No. 184952, October 11, 2010, 632 SCRA 551, 569.

[27] G.R. No. 179710, June 29, 2010, 622 SCRA 196.

[28] Id. at 207.

[29] G.R. No. 174097, July 21, 2010, 625 SCRA 220.

[30] Id. at 239.

[31] G.R. No. 125299, January 22, 1999, 301 SCRA 668.

[32] Id. at 698-699.

[33] TSN, October 20, 2006, pp. 2-6.

[34] Id. at 6.

[35] Id.

[36] TSN, October 20, 2006, pp. 6-8.

[37] People v. Araneta, G.R. No. 191064, October 20, 2010, 634 SCRA 475, 485.

[38] TSN, October 20, 2006, pp. 6-7.

[39] TSN, October 25, 2006, pp. 3-5.

[40] People v. Tan, G.R. No. 191069, November 15, 2010, 634 SCRA 773, 788.

[41] People v. Mayingque, G.R. No. 179709, July 6, 2010, 624 SCRA 123, 140.

[42] Act No. 4103 as amended by Act No. 4225 and Republic Act No. 4203.

[43] Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (Emphasis supplied.)

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