PEOPLE OF THE PHILIPPINES, APPELLEE, VS. NITA EUGENIO Y PEJER, APPELLANT.

G.R. No. 186459. September 01, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Nita Eugenio y Pejer (appellant) was charged before the Regional Trial Court (RTC) of Pasig City[1] for violation of Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165) or the Comprehensive Dangerous Drugs Act of 2002, allegedly committed as follows:[2]

> On or about May 13, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Aldrin Mariano, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing three (3) centigrams (0.03 gram) of white crystalline substance, which was found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.
>
> Contrary to law. (underscoring supplied)

From the evidence for the prosecution, the following version is culled:

On the night of May 13, 2003, at around 7:30 p.m., a confidential informant reported to PO1 Aldrin Mariano (PO1 Mariano), officer-on-duty at the Pasig City Hall Detachment, that one alias "Aruba" was selling shabu at Vicper Compound, Malinao, Pasig City.

P/Sr. Insp. Chief Rodrigo Villaruel at once formed a buy-bust team to conduct an operation composed of, among others, PO3 Amilassan Salisa as team leader, and PO1 Mariano as poseur-buyer. PO1 Mariano, who was given two one hundred peso bills bearing Serial Numbers BT219634 and XN547078 to be used as buy-bust money, wrote his initials "ARM" thereon at the lower left portion.

The operation was recorded in the police blotter and coordinated with the Philippine Drug Enforcement Agency (PDEA) which gave it control number NOC-1305-03-10.[3]

At around 8:00 in the evening, the team, together with the confidential informant, proceeded to the residence of appellant who was standing in front of her house. The informant at once introduced PO1 Mariano as buyer. As appellant inquired how much, PO1 Mariano handed her the two marked bills upon which appellant drew out one substance-filled sachet from the "outside wall" of her house. At that instant, PO1 Mariano removed his cap, the pre-arranged signal for the team members to, as they did, close in.

PO1 Mariano then held appellant's arm, identified himself as a police officer, and apprised her of her constitutional rights as he retrieved from her the buy-bust money. He thereafter marked "EXH-A arm/05/13/03" on the substance-filled sachet "sold" to him by appellant.

The buy-bust team brought appellant to the Rizal Medical Center for physical check-up and later to the police

detachment office where P/Sr. Insp. Chief Villaruel prepared the following memorandum of May 13, 2003[4] addressed to the Chief of the Eastern Police District Crime Laboratory Office, requesting the conduct of laboratory examination on the seized substance-filled sachet to determine the presence of dangerous drugs and their weight:

> 1. Respectfully forwarded to your good office herewith/attached (sic) submitted specimen for laboratory examination to wit:
>
> NATURE OF OFFENSE
>
> VIOLATION OF RA 9165
>
> NAME OF SUSPECT
>
> NITA EUGENIO Y PEJER,
>
> 57 years old, widow,
> Res. At Vicper Compound,
> Malinao, Pasig City
>
> D.T.P.O.
>
> On or about 8:30 PM 13 May
>
> 2003 at Vicper Compound, Malinao, Pasig City
>
> ARRESTING OFFICER
>
> Elements of Mayor's Special
>
> Action Team/ City Hall
> Detachment, Pasig City
> Police Station represented by
> PO1 Aldrin Mariano
>
> SPECIMEN SUBMITTED
>
> One (1) heat sealed
> transparent plastic sachet
> containing undetermined
> amount of suspected "shabu"
> Marked EXH A ARM
> 05/13/03
>
> 2. Request acknowledge (sic) receipt.[5] (emphasis and underscoring supplied)

Acting on the above-quoted memorandum, P/Sr. Insp. Annalee R. Forro, Forensic Chemical Officer of the Eastern Police District Crime Laboratory Office, who received the sachet, conducted on the same night of May 13, 2003, at around 8:33 P.M, a laboratory examination of the contents of the sachet, the result of which she recorded in Chemistry Report No. D-889-03E[6] wherein she concluded that the substance inside the sachet weighed 0.03 gram and was positive for methamphetamine hydrochloride.

Hence, the filing of the Information against appellant.

Denying the charge against her, appellant gave the following version:

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On May 11, 2003, while fetching water from a nearby well, she was, in the presence of family and neighbors, accosted by police officers who brought her to the police station. At the station, she was questioned whether she knew one "Baylene Ramba," to which she replied in the negative. She was later surprised to learn that an Information for violation of R.A. 9165 had been filed against her.

Finding for the prosecution, the trial court, by Decision of May 31, 2005, convicted appellant, disposing as follows:

> WHEREFORE, the Court finds accused NITA EUGENIO y Pejer @ Aruba GUILTY beyond reasonable doubt of the crime of violation of Sec. 5, Art. II of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon her the penalty of LIFE IMPRISONMENT and to pay a fine of Php500,000.00
>
> SO ORDERED.[7] (underscoring supplied)

By Decision of September 16, 2008,[8] the Court of Appeals affirmed the trial court's decision.

In affirming the trial court's rejection of appellant's defense, the appellate court held:

> . . . As correctly observed by the trial court, the claim that accused-appellant was arrested without reason is not supported by evidence. Not one of the alleged witnesses to the unlawful arrest, including accused-appellant's own daughter, was presented to corroborate the claim. Hence, the court a quo is correct in considering the defense incredible for being self-serving and uncorroborated.[9] (underscoring supplied)

In her present appeal, appellant claims, in the main, 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 item.

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 specifically claims that no physical inventory and photographing of the specimen took place. Respecting the required conduct of an inventory, since only one sachet was seized, failure to comply therewith may understandably have been rendered unnecessary.

As for the required photograph of the seized item, a reading of the testimony of PO1 Mariano confirms the prosecution's failure to follow such requirement:

> Atty. Ronatay:
>
> Q:
>
> Are you aware that it is required under the dangerous drugs law that in case of the buy-bust operation, the subject specimen their (sic) must be a picture taken on the subject specimen?

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A:

What I said is that impossible, we have a buy-bust to verify.

Atty. Ronatay:

Your Honor, I think the answer is not responsive to the question. We moved (sic) to strike that out and the witness to answer the question.

Court:

Answer the question.

Witness:

A:

Not yet ma'am.

Atty. Ronatay:

Q:

How many times have you been engaged in buy-bust operation?

A:

More or less ten ma'am.

Q:

And in those ten cases, was there ever an occasion that the subject specimen, there was a picture taken on that subject specimen?

A:

None, ma'am.

Q:

Are you also aware Mr. witness that under the dangerous drugs law, it is standard operating procedure that in cases of operation specifically in a buy-bust operation, there has also be (sic) a presence of the media?

A:

I do not know, ma'am.

Q:

In this case was there a media present at the time of the operation?

A:

None ma'am.

Q:

Are you also aware that under the dangerous drugs law, it is required that there has to be coordination with the Local Brgy.?

A:

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None ma'am.[10] (emphasis and underscoring supplied)

Failing to comply with the provision of Section 2 of R.A. No. 9165 does not necessarily doom the case for the prosecution, however. People v. Pringas enlightens:

> 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.[11] (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[12] of R.A. No. 9165 reading:

> 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)

Clearly, it was necessary for the prosecution to prove that the integrity and evidentiary value of the shabu was preserved.

As reflected in the above-quoted Memorandum of P/Sr. Insp. Chief Villaruel, the time of operation was "on or about 8:30 P.M., 13 May 2003." If the allegedly seized substance-filled sachet was confiscated at 8:30 p.m., it is highly improbable that it was received at the Crime Laboratory at 8:33 P.M or a mere three minutes after the seizure, given that appellant was after his arrest first brought to a hospital for physical check-up.

Doubt is thus engendered on whether the object evidence subjected to laboratory examination and presented in court is the same as that allegedly "sold" by appellant. In fine, the prosecution failed to prove the integrity and evidentiary value of the 0.03 gram specimen.

Parenthetically, unlike in Pringas, the defense in the present case questioned early on, during the cross examination of PO1 Mariano, the failure of the apprehending officers to comply with the inventory and photographing requirements of Section 21 of R.A. No. 9165. And the defense raised it again during the offer of evidence by the prosecution, thus:

> Atty. Ronatay:
>
> x x x x
>
> Exh. C - we object to its admission as well as the purpose for which they are being offered for being planted evidence, your honor. [13] (underscoring supplied)

The prosecution having failed to discharge the burden of establishing the guilt of the accused beyond reasonable doubt, the burden of the evidence did not shift to the defense to thus leave it unnecessary to pass upon the defense evidence even if it were considered weak. Appellant's acquittal based on reasonable doubt is then in order.

WHEREFORE, the Petition is GRANTED. The assailed decision is REVERSED and SET ASIDE. Appellant, Nita Eugenio y Pejer, is ACQUITED for failure of the prosecution to prove her guilt beyond reasonable doubt.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections for Women, Mandaluyong City who is directed to cause the immediate release of appellant, unless she is being lawfully held for another cause,

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and to inform this Court of action taken within ten (10) days from notice.

SO ORDERED.

Bersamin, Del Castillo,[*] Villarama, Jr., and Sereno, JJ., concur.

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[*] Per Special Order No. 879 dated August 13, 2010 in lieu of Associate Justice Arturo D. Brion.

[1] Records, pp. 1-2

[2] Id.

[3] Id. at 8.

[4] Id. at 7.

[5] Ibid.

[6] Id. at 10.

[7] CA rollo, p. 14

[8] Penned by Associate Justice Ramon M. Bato, Jr. with the concurrence of Associate Justices Remedios A. Salazar-Fernando and Rosalinda Asuncion-Vicente.

[9] Rollo, p. 8.

[10] TSN, October 21, 2003, pp. 23-24.

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

[12] Took effect on November 27, 2002.

[13] Exhibit C pertains to the specimen confiscated from appellant which is the plastic sachet containing white crystalline substance or shabu., TSN, March 10, 2004, p. 31.

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