

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. BONIFACIO GAYLON Y ROBRIDILLO, A.K.A. "BONI"; ACCUSED-APPELLANT.

G.R. No. 219086. March 19, 2018

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

This is an appeal from the October 28, 2014 Decision[1] of the Court of Appeals (CA).in CA-G.R. CR-RC, No, 06347, which affirmed the May 10, 2013 Decision[2] of Branch 151, Regional Trial Court (RTC) of Pasig City in Criminal Case No. 16681-D finding Bonifacio Gay ion y Robridillo a.k.a. "Boni" (appellant) guilty beyond reasonable doubt of violation of Section 5. Article II of Republic Act No. 9165 (RA 9165),[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentencing him to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

Appellant was charged with violation of Section 5, Article II of RA 9165 in an Information[4] that reads:

On or about May 3, 2009, in Pasig City, and within the jurisdiction of this Honorable Court, [appellant], not being lawfully authorized to sell any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Frederick Nervar y Malana, 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 tests of methamphetamine hydrochloride, a dangerous drug, in violation of the said law.

Contrary to law.[5]

Appellant pleaded "not guilty" during his arraignment.[6]

Version of the Prosecution

Based on the testimony of PO1 Frederick Nervar y Malana (PO1 Nervar), the prosecution established the following facts:

PO1 Nervar was a member of the Philippine National Police and was assigned at the Pasig Police Station, Station Anti-Illegal Drugs Operation Task Force (SAID-SOTF). On May 3, 2009, at around 4:45 p.m., a confidential informant (CI) arrived at their office and reported an ongoing illegal trade of drugs in MRR Street, Brgy. Pineda, Pasig City, involving "alias Boni" herein appellant. A buy-bust group was formed wherein PO1 Nervar was designated as the poseur-buyer. He was given a P200.00 bill and a P100.00 bill as buy-bust money wherein he placed his initials at the right bottom portion of said bills.

At around 6:50 p.m., PO1 Nervar, together with the CI and three other police officers, arrived at the target area. The CI introduced PO1 Nervar to appellant as a buyer of shabu. Appellant then asked how much PO1 Nervar was going to buy to which lie replied, "isang kasang tres lang" which meant P300,00. After receiving the P300.00 buy-bust money, appellant got from his left pocket a plastic sachet that contained a white crystalline substance

suspected to be shabu and gave the same to PO1 Nervar, who thereupon, removed his cap to signal that the transaction, was consummated. The rest of the buy-bust team immediately arrived. They arrested appellant and recovered from him the buy-bust money. PO1 Nervar marked the sachet and prepared the inventory; however, appellant refused to sign the same. Thereafter, they brought appellant, to their office. PO1 Nervar also brought the seized sachet to the crime laboratory, together with a request for laboratory examination. Appellant, was also brought to the Rizal Medical Center for a drug test.

PO1 Nervar identified in court the plastic sachet which he marked and when examined yielded positive for shabu.

Version of the Defense

The defense presented appellant as its sole witness. He denied the charge against him. He claimed that he was resting inside his house when police officers suddenly barged in and forcibly brought him to the police station, He knew about the accusation against him only the following day.

The defense also pointed to the failure of the police officers to coordinate with the Philippine Drug Enforcement Agency (PDEA). It argued that the supposed coordination form should not be given any weight because it was faxed from a residential house and not from the PDEA. Moreover, PO1 Nervar failed to record, in their logbook the serial numbers of fee buy-bust money prior to the operation.

Riding of the Regional Trial Court

The RTC found that the prosecution, had proven the existence of the elements of illegal sale of shabu, Thus, it sentenced appellant to suffer the penalty of life imprisonment and to pay a fine of P500,000.00.

The RTC brushed aside as irrelevant the argument interposed by the defense that the fax copy of the coordination form came from a residential house as it had nothing to do with the elements of the offense charged; moreover, the RTC held that a buy-bust operation is not invalidated by mere non-coordination with the PDEA claiming that a buy-bust operation is just a form, of an in flagrante arrest. The RTC also labeled as immaterial. PO1 Nervar's failure to record the serial numbers of the buy-bust money in their logbook and stressed that PO1 Nervar enjoyed the presumption, of regularity in the performance of official duties especially in the absence of proof of ill-motive, Finally, the RTC lent more credence to the positive testimony of the prosecution's witness vis-a-vis the uncorroborated, and unsubstantiated claim of frame-up and denial by the defense.

Aggrieved, appellant appealed to the CA.

Riding of the Court of Appeals

In his Brief,[7] appellant argued that there was no evidence sufficient to support his conviction beyond reasonable doubt.[8] He alleged that certain irregularities attended the buy-bust operation. In particular, it failed to comply with the requirements under Section 21, Article II of RA 9165, He claimed that no representatives from the media, Department of Justice (DOJ) or any fledged public official witnessed the buy-bust or signed the inventory sheet; that the apprehending team did not take a photograph of the seized drug in his presence or his representative;[9] that it was unclear when or how the marking was done since PO1 Nervar merely testified that he himself placed the markings; that neither was there any testimony that the marking was done in the presence of the accused or his representative; that there was no testimony regarding the handling of the shabu from the time of its seizure until its presentation in court;[10] and that PO1 Nervar did not categorically state that the item which he marked as "FNB 03/05/09" was the same item which he bought from appellant.[11] Given the foregoing, the defense concluded that the evidence proffered by the prosecution did not satisfactorily establish an unbroken chain of custody[12] thus putting in issue the integrity, identity, and evidentiary value of the seized drug.

The appellate court, however, was not swayed by the arguments of the defense. Thus, on October 28, 2014, the CA affirmed in full the RTC ruling, viz.:

WHEREFORE, premises considered, the instant appeal is DENIED. The assailed May 10, 2013 Decision is AFFIRMED.

SO ORDERED.[13]

The CA disregarded appellant's arguments; it found the same bare and unsubstantiated. It held that appellant failed to prove that the evidence submitted against him had been tampered with.[14] Moreover, it ruled that appellant's defense of denial and alibi could not prevail over the categorical testimony of PO1 Nervar.

Hence, appellant filed the instant appeal. In his Manifestation[15] dated October 29, 2015, appellant deemed it no longer necessary to file a supplemental brief considering that the assigned errors had already been exhaustively discussed in the brief he filed before the CA.

Our Ruling

The Court grants the appeal.

"Our Constitution mandates that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. x x x [T]he prosecution must rest on its own merits and must not rely on the weakness of the defense."[16]

In this case, the prosecution had the burden of establishing the presence of the elements of the crime of illegal sale of shabu in order to secure a conviction of the appellant therefor.

"Generally, the assessment by the [RTC] x x x, once affirmed by the CA, is binding and conclusive upon the Court, unless there is a showing that certain facts or circumstances had been overlooked or misinterpreted that, if properly considered, would substantially affect the ruling of the case,"[17] as in this case. In this connection, both the RTC and the CA failed to take into consideration the buy-bust team's non-compliance with Section 21, Article II of RA 9165. In particular, (1) the prosecution's failure to show that the Inventory of Seized Properties/Items[18] was prepared in the presence of a media representative, a DOJ representative, and any elected public official who should have signed the same and received copies thereof; (2) the prosecution did not offer as evidence any photograph of the seized shabu; and (3) no explanation for such non-compliance was proffered by the prosecution. In short, the prosecution failed to show "that the non-compliance with the requirements was upon justifiable grounds, [and] that the evidentiary value of the seized items was properly preserved by the apprehending team."[19]

Moreover, a perusal of the Inventory of Seized Properties/Items[20] shows that it was signed only by PO1 Nervar with a notation that the appellant had refused to sign the same. No representative of appellant signed said Inventory of Seized Properties/Items; neither did any representative from the media, DOJ, and any elected public official. Worse, the prosecution did not provide any justifiable ground for this lapse.

The Court, also notes that the only photograph submitted by the prosecution was Exhibit "J".[21] A perusal of Exhibit "J" shows that such was a blurred picture of the buy-bust money, together with what appeared to be a small plastic sachet with the blurred marking "FNB 03/05/09" BUYBUST and an illegible signature. On the other hand, Exhibit "J-1"[22] was a photocopy of the buy-bust money only. Notably, in the Prosecution's Formal Offer of Documentary Evidence,[23] and the RTC Order dated April 18, 2012,[24] it was stated that said Exhibits "J" and "J-1" were offered and admitted merely as a picture of the buy-bust money and not of the seized shabu.

In addition, PO1 Nervar also gave conflicting testimonies as regards when the photograph was taken. At first, he

testified that it was taken before the buy-bust operation but upon further questioning he testified that the picture was actually taken after the operation, to wit:

[Prosecutor to the witness, PO1 Nervar, on re-direct examination]:

Q:

By the way, it was you who marked the money?

A:

Yes, [S]ir.

Q:

What did you do after marking the money?

A:

We took pictures.[25]

x x x x

[Defense counsel/Public Attorney's Office lawyer to the witness, PO1 Nervar, on re-cross examination]:

Q:

You mentioned that you took the picture of the marked money before the operation. Am I correct that you have no picture with the said date that it was taken before your operation? Was it on the same date?

A:

Yes, [M]a'am.

Q:

If we are to follow your statement, you should have a picture with the date of the operation that you are mentioning?

A:

Yes, [M]a'am.

Q:

Am I correct that there is no such picture in your evidence?

A:

It is only the marked money.

Q:

Am I correct that the picture you presented here is a picture after the operation?

A:

Yes, [M]a'am.

Q:

It was not before the operation that you were claiming as part of the recording of your office?

A:

Yes, [M]a'am.[26]

And again, the prosecution likewise did not give any justifiable ground for this lapse.

"Verily, without the State's justification for the lapses or gaps, the chain of custody so essential in the establishment of the corpus delicti of the offense charged against [appellant] was not shown to be unbroken and preserved." [27] Thus, as explained in *People v. Lumudag*: [28]

The records reveal that the buy-bust team did not faithfully observe the foregoing statutory requirements, such as performing the physical inventory and photographing of the illegal drug immediately upon seizure and confiscation, and in the presence of a representative of the media and the Department of Justice (DOJ), and of any elected public official who would then be required to sign the inventory and be given copies thereof. The requirements were precisely designed by the law to prevent planting, or switching, or contamination of evidence, and thereby secure the suspects against malicious incriminations. In the field of drug enforcement, the need for the requirements to be literally followed, or at least to be substantially complied with, has become all the more pronounced. By specifying the steps to be taken for preserving the chain of custody, Congress really established firm guarantees against false incriminations of individuals that the lawless elements among the ranks of the law enforcers had often resorted to.

x x x x

The non-disclosure of the justification by the members of the buy-bust team underscored the uncertainty about the identity and integrity of the shabu admitted as evidence against the accused. The unavoidable consequence of the non-disclosure of the justification was the non-establishment of the chain of custody, which, in turn, raised serious doubt on whether or not the shabu presented as evidence was the shabu supposedly sold by [appellant], or whether or not shabu had really been sold by him.

"When the courts are given reason to entertain reservations about the identity of the illegal drug item alleged[ly] seized from the accused, the actual crime charged is put into serious question. Courts have no alternative but to acquit on the ground of reasonable doubt." [29]

To stress, the presence of the so-called insulating witnesses required under Section 21, Article II of RA 9165 should also either be present during marking or their absence should be with a valid justification. Otherwise, a lapse with respect thereto would also result in a gap in the chain of custody as held in *People v. Macud*: [30]

The prosecution never contested that the police officers failed to comply with Section 21 (1) of [RA] 9165 and Section 21 (a) of its IRR. The lapses constituted of the following:

first, the absence of a representative of the media, the DOJ, and any elected public official to witness the marking and physical inventory of the seized drugs; and

second, although the marking and physical inventory of the seized drugs were done immediately after the arrest, the photograph was done after the operation and in the police station by PO2 Francisco, also without the requisite persons who should have witnessed the act.

When asked to explain why there was failure to comply with the procedural requirements, PO2 Catarata simply said that doing so could compromise the buy-bust operation:

x x x x

We find this justification insufficient. Other than, PO2 Catarata's bare allegation that coordination with the

local officials could have compromised the buy-bust operation, the prosecution offered no factual evidence to substantiate this claim. Even if the claim were true, there is no requirement under the law that the elected public official who should witness the operation must be one of those elected in the same locality where the operation is conducted so as not to compromise the police operation in the area. This is clear from the wordings of the law itself which says "any elected public official."

We cannot even declare that there was substantial compliance with, the law in this case as the police officers invited no other person to witness the procedures that were done after the buy-bust operation, i.e., the marking, inventory, and photography of the seized drugs, There was no representative of the media or the DOJ and no allegation that these people could similarly compromise the operation if they had been informed of and present before, during, and after the operation.

The presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody. We have noted in several cases that a buy-bust operation is susceptible to abuse, and the only way to prevent this is to ensure that the procedural safeguards provided by the law/ are strictly observed. In the present case, not only have the prescribed procedures not been followed, but also (and more importantly) the lapses not justifiably explained.

x x x

In view of the foregoing, the Court is constrained, to acquit the appellant on the ground of reasonable doubt.

WHEREFORE, the appeal is GRANTED. The assailed October 28, 2014 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 06347 is REVERSED and SET ASIDE, Accordingly, appellant Bonifacio Gaylon Robridillo, a.k.a. "Boni", is ACQUITTED for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately RELEASED from detention, unless he is confined for any other lawful cause. Let a copy of this Decision be FURNISHED to the Director of the Bureau of Corrections for immediate implementation. The Director of the Bureau of Corrections is directed to report to this Court, within five (5) days from receipt of this Decision, the action he has taken, Copies shall also be FURNISHED to the Director General of the Philippine National Police, and the Director General of the Philippine Drug Enforcement Agency FOR THEIR INFORMATION.

FURTHERMORE, Exhibit "F", which had been forwarded to the vault of the Court of Appeals for safekeeping per the Letter dated December 9, 2013 signed by Medella A. Carrera, Chief, Criminal Cases Section, is ORDERED to be FORWARDED to the Philippine Drug Enforcement Agency for proper disposal in accordance with law.

SO ORDERED.

Sereno, C. J., on leave.

Leonardo-De Castro,[**] Peralta,[***] and Tijam, JJ., concur.

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

(SGD)

TERESITA J. LEONARDO-DE CASTRO

Associate Justice

Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

(SGD)

ANTONIO T. CARPIO

Acting Chief Justice[*]

[**] Designated as Acting Chairperson par Special Order No. 2540 dated February 28, 2018.

[***] Designated as additional member per October 18, 2017 raffle vice J. Jardeleza who recused due to prior action as Solicitor General.

[1] CA rollo, pp. 85-96; penned by Associate Justice-Vicente S.E. Veloso and concurred in by Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela.

[2] Records, pp. 121-127; penned by Judge Maria Teresa Cruz-San Gabriel.

[3] RA 9165 has been amended by RA 10640, entitled An Act to Further Strengthen the Anti-Drug Campaign of the Government, amending for the purpose Section 21 of [RA] 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, which was approved on July 15, 2014.

[4] Records., pp. 1-2.

[5] Id. at 1.

[6] Id. at 24-25.

[7] CA rollo, pp. 40-54.

[8] Id. at 47.

[9] Id. at 48.

[10] Id. at 49.

- [11] Id. at 49-50.
- [12] Id. at 51.
- [13] Id. at 96.
- [14] Id. at 95.
- [15] Rollo, p. 26.
- [16] *People v. Miranda, Jr.*, G.R. No. 206880, June 29, 2016, 795 SCRA 227, 235.
- [17] *People v. Lumudag*, G.R. No. 201478, August 23, 2017.
- [18] Records, p. 89; Exhibit "I".
- [19] *People v. Lumudag*, supra note 17.
- [20] Records, p. 89; Exhibit "I".
- [21] Id. at 91.
- [22] Id. at 92.
- [23] Id. at 77-80.
- [24] Id. at 99.
- [25] TSN, February 2, 2011, p. 13.
- [26] Id. at 16,
- [27] *People v. Lumudag*, supra note 17.
- [28] Id.
- [29] *People v. Miranda, Jr.*, supra note 16 at 239.
- [30] G.R. No. 219175, December 14, 2017.
- [*] Pursuant to Special Order No. 2539 dated February 28, 2018.

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