

THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. BONG BARRERA Y NECHALDAS, ACCUSED-APPELLANT.*G.R. No. 232337. August 01, 2018*

Ponente: TIJAM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-232337/>**TIJAM, J.:**

Before Us is an appeal, assailing the September 15, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07144, which affirmed the September 11, 2014 Decision[2] of the Regional Trial Court (RTC) of Quezon City, Branch 82 in Criminal Case No. Q-08-153487 which convicted accused-appellant of violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the "Comprehensive Drugs Act of 2002".

Antecedent Facts

An Information[3] for the sale of 0.03 gram of methamphetamine hydrochloride or shabu was filed against accused-appellant, to which he pleaded not guilty to.

During trial, the prosecution established that on August 9, 2008, on the basis of a report of a confidential informant (CI) the day before that a certain "Bong" was selling drugs in Barangay Damayan, Quezon City, a buy-bust operation was organized.[4]

SPO2 Purisimo Angeles (SPO2 Angeles) was designated as the poseur-buyer and was given a marked P500.00 bill by Police Superintendent Allan Acong Parreno (P/Supt. Parreno).[5] Chief Inspector Richard Fiesta prepared the coordination form and the Pre-operation report was prepared by PO1 Jonathan Rodriguez (PO1 Rodriguez). The operation was coordinated with the Philippine Drug Enforcement Agency (PDEA).[6]

SPO2 Angeles and the CI proceeded to General Lim, Barangay Damayan, Quezon Avenue where they met with accused-appellant. The CI introduced SPO2 Angeles as the buyer. Accused-appellant drew a plastic sachet from his right pocket and gave it to SPO2 Angeles, who in turn, handed to accused-appellant the marked P500.00 bill. SPO2 Angeles then removed his bull cap as the pre-arranged signal for the rest of the buy-bust team to approach them. SPO3 Edgardo Ramos arrested accused-appellant and informed him of his constitutional rights. The arrest yielded the marked P500.00 bill and one heat-sealed transparent plastic sachet containing white crystalline substance.[7] Accused-appellant was thereafter brought to the Masambong Police Station 2.

The confiscated item remained in SPO2 Angeles' possession from the crime scene up to the police station. Upon arrival at the station, SPO2 Angeles affixed his initials on the plastic sachet and explained that he did not do so at the crime scene because there were too many people looking at them and they wanted to avoid a commotion. SPO2 Angeles conducted an inventory of the confiscated items and prepared a draft inventory that was finalized by PO1 Rodriguez. PO1 Rodriguez made the request for laboratory examination and SPO2 Angeles brought the specimen to the Crime Laboratory, where it was tested positive for methylamphetamine hydrochloride.[8]

During trial, the parties stipulated, among others, the following:

1. That Engr. Leonard Jabonillo is a Forensic Chemist of the Philippine National Police and that his office received a Request for Laboratory Examination;
2. That together with the said Request, a plastic sachet which contained a smaller plastic sachet with white crystalline substance inside was submitted to his office;
3. That he conducted the requested laboratory examination and submitted Chemistry Report D-395-2008;
4. That he found the specimen positive for methylamphetamine hydrochloride; and
5. That he turned over the specimen to the evidence custodian and retrieved the same and brought it to Court.[9]

On cross-examination, SPO2 Angeles stated that when the inventory was prepared, there were no representatives from the media, DOJ and barangay officials. He said that as the apprehending officer, it was not his duty but that of his office to contact these representatives.[10]

Accused-appellant, for his part, testified that he was buying cigarettes from a store when he and his two other companions were arrested. They were brought to the precinct and to a room upstairs where they were told that illegal drugs were recovered from them. He alleged that "pang areglo" was being asked from them in the amount of P100,000.00 that was later lowered to P50,000.00. His companions were able to give the said amount but he told them that he did not have the money. He was thereafter brought to a detention cell and after three days was subjected to inquest proceedings. He denied selling shabu in the area where he was arrested.[11]

In its Decision dated September 11, 2014[12] the RTC found that all elements of the crime for illegal sale of dangerous drugs was established. It further found that prosecution was able to establish the integrity of the corpus delicti and the unbroken chain of custody of the seized drug. It disposed, thus:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Bong Barrera y Nechaldas "Guilty" beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165.

Accordingly, this Court sentences accused Bong Barrera y Nechaldas to suffer the penalty of Life Imprisonment and to pay a Fine in the amount of Five hundred Thousand (P500,000.00) Pesos without eligibility for parole in accordance with R.A. 9346.

The Branch Clerk of Court is hereby directed to transmit to the Philippine Drug Enforcement Agency the dangerous drug subject of this case for proper disposition and final disposal.

SO ORDERED.[13]

On appeal, the CA sustained the accused-appellant's conviction. It echoed that the elements of the illegal sale of shabu were established. It found that the non-compliance with Sec. 21 of RA 9165 was negligible considering that the prosecution was able to preserve the integrity and evidentiary value of the illegal drug.

Hence, this appeal.

Our Ruling

Accused-appellant questions the integrity of the corpus delicti and points out the various non-compliance with Sec. 21 of RA 9165, i.e. "the item allegedly subject of sale was not immediately marked by the apprehending officers after confiscation but only at the police station. Neither was there any showing that the marking was done in the presence of the accused-appellant; nothing in the records would show that the inventory was conducted and photographs were taken within the presence of any representative from the media, Department of Justice or any elected official.

The Office of the Solicitor General (OSG) counters that the guilt of the appellant for the crime charged was proven beyond reasonable doubt and that the defenses of denial, frame-up and extortion are utterly weak to

controvert the evidence of the prosecution. It also insists that the integrity and evidentiary value of the subject drug were duly preserved.

The petition is meritorious.

Non-compliance with the requirements of Section 21, RA 9165 casts doubt on the integrity of the seized item and creates reasonable doubt on the guilt of the accused-appellant.[14]

Sec. 21, Article II of RA 9165 sets out the procedure as regards the custody of dangerous drugs:

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 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided, further, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the

above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused/and or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

The rules clearly provides that the apprehending team should mark and conduct a physical inventory of the seized items and to photograph the same immediately after seizure and confiscation in the presence of the accused or his representative or counsel, as well as any elected public official and a representative of the National Prosecution Service or the media. The law mandates that the insulating witnesses be present during the marking, the actual inventory, and the taking of photographs of the seized items to deter [possible planting of] evidence.[15]

In this case, there was failure all together for the police to conduct the inventory and photograph the same before the insulating witnesses:

Q: May I go back to the preparation of the inventory. The law requires you to prepare the inventory in the presence of the representative from Justice, is it not?

A: No, sir.

Q: You do not require the presence of a representative whenever you conduct an inventory?

A: No, sir.

Q: Is it not also a fact that you should prepare the inventory in the presence of media?

A: No, sir.

Q: You do not also require the presence of media also?

A: Yes, sir.

Q: You should also prepare that in the presence of the barangay officials?

A: No, sir.

Q: In all these cases, there was nothing?

A: Yes, sir.[16]

The OSG admits the same in its Brief: While a photograph of the seized drug was not taken and there was no elected public official or a representative from the media or the DOJ present during the inventory, these, however, are likewise not fatal to the chain of custody.[17]

What is particularly disturbing is that there was no justifiable explanation proffered by the prosecution as regards the absence of these insulating witnesses.

Q: Mr. Witness, in the year 2008, how long have you been an Anti-Narcotics operative?

A: Almost fifteen 15 years, sir.

Q: In the span of fifteen years were you even subjected by your superior to any training on R.A. 9165?

A: Yes, sir.

x x x x

Q: As mentioned by the defense lawyer, Section 21 expressly requires the presence of the prosecutors, of the DOJ, representative of the media and barangay officials. Why did you not require the presence of this (sic) persons during the inventory?

A: As apprehending officer, I am not responsible in contacting these persons. It was our office.[18]

Indeed, failure to strictly comply with this rule, however, does not ipso facto invalidate or render void the seizure and custody over the items as long as the prosecution is able to show that "(a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved." [19] However, in case of non-compliance, the prosecution must be able to "explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved" [20] x x x because the Court cannot presume what these grounds are or that they even exist.

Also, the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist. [21] Here, it was markedly absent.

Considering the absence of a justifiable explanation as to the non-compliance with the rules, We find that the prosecution failed to show that the seized substance from the accused was the same substance offered in Court. The corpus delicti's integrity cannot then be said to have been properly established.

The breaches in the procedure committed by the police officers, and left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the appellants as the integrity and evidentiary value of the corpus delicti had been compromised. [22] The Court, therefore, acquits on the basis of reasonable doubt.

WHEREFORE, the appeal is GRANTED. The Court of Appeals' Decision dated September 15, 2016, docketed as CA-G.R. CR-H.C. No. 07144, which affirmed the Regional Trial Court of Quezon City, Branch 82 Decision dated September 11, 2014 in Criminal Case No. Q-08-153487, is hereby REVERSED and SET ASIDE.

Accordingly, accused-appellant BONG BARRERA y NECHALDAS is hereby ACQUITTED based on reasonable doubt.

The Director of the Bureau of Corrections is directed to cause the immediate release of accused-appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five days from notice.

SO ORDERED.

Leonardo-De Castro,[*] Del Castillo, Jardeleza, and Gesmundo,**] JJ., concur.

[*] Designated as Acting Chairperson of the First Division per Special Order No. 2559, dated May 11, 2018.

[**] Designated as Acting Member of the First Division per Special Order No. 2560, dated May 11, 2018.

[1] Penned by Associate Justice Carmelita Salandanan Manahan and concurred in by Associate Justices Jane Aurora C. Lantion and Franchito N. Diamante. Rollo, pp. 2-14.

[2] Penned by Acting Presiding Judge, Lily Ann M. Padaen, CA rollo, pp. 47-53

[3] "That on or about the 9[th] day of August 2008 in Quezon City, accused, without lawful authority did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, a dangerous drug, to wit: One (1) plastic sachet of white crystalline substance containing zero point zero three (0.03) grams of Methylamphetamine (sic) Hydrochloride, a dangerous drug.

CONTRARY TO LAW." Rollo, pp. 2-3.

[4] Id. at 3; CA rollo, pp. 47-48.

[5] The initials "PA" was written on the center logo of the "Bangko Sentral". Rollo, p. 3; CA rollo, p. 48.

[6] Id.

[7] Id. at 3-4 & 48.

[8] Id. at 4 & 48.

[9] Id. at 5.

[10] CA rollo, p. 49.

[11] Rollo, p. 6; CA rollo, p. 50.

[12] Id. at 47-53.

[13] Id. at 53.

[14] *People v. Binasing*, G.R. No. 221439, July 4, 2018.

[15] *People v. Binasing*, *supra* note 13.

[16] TSN, November 5, 2012, pp. 4-5.

[17] CA rollo, p. 78.

[18] TSN, November 5, 2012, p. 5-6.

[19] *People v. Dumagay*, G.R. No. 216753, February 7, 2018.

[20] *People v. Almorfe, et al.*, 631 Phil 51, 60 (2010).

[21] *People v. Crispo*, G.R. No. 230065, March 14, 2018.

[22] *People v. Ferrer*, G.R. No. 213914, June 6, 2018.

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