

## **THIRD DIVISION**

**[ G.R. No. 212626, June 03, 2019 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ROLANDO TERNIDA Y MUNAR, ACCUSED-APPELLANT.**

### **DECISION**

**LEONEN, J.:**

The failure of law enforcers in buy-bust operations to photograph seized drugs in accordance with Article II, Section 21 of Republic Act No. 9165, combined with the prosecution's failure to address this omission, raises doubt on the identity of the drugs seized, especially when the amount of dangerous drugs allegedly taken from the accused is minuscule.

This Court resolves an appeal<sup>[1]</sup> of the October 30, 2013 Decision<sup>[2]</sup> of the Court of Appeals in CA-G.R. CR-H.C. No. 05208, which affirmed the conviction of Rolando Ternida y Munar (Ternida) for violating Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, for the illegal sale of dangerous drugs.

An Information was filed charging Ternida with selling 0.0402 gram of shabu, in violation of the Comprehensive Dangerous Drugs Act. It read in part:

That on or about the 17th day of November 2009, in the City of San Fernando, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and without first securing the necessary permit, license or prescription from the proper government agency, did then and there willfully, unlawfully and feloniously sell, dispense and deliver one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as "Shabu" a dangerous drug, weighing ZERO POINT ZERO FOUR HUNDRED TWO (0.0402) gram to PO2 RICARDO ANNAGUE, who posed as a poseur buyer thereof using marked money one (1) piece of One Thousand peso bill bearing serial number 526998.

CONTRARY TO LAW.<sup>[3]</sup>

Upon arraignment, Ternida pleaded not guilty to the crime charged. Pre-trial was conducted, and trial on the merits then ensued.<sup>[4]</sup>

The version of the prosecution is as follows:

On November 12, 2009, a confidential informant told the San Fernando City Police that an illegal drug transaction involving Ternida would take place in five (5) days at Quezon Avenue, San Fernando City, La Union. Acting on the tip, the San Fernando City Police formed a buy-bust team composed of Police Officer 2 Ricardo Annague

(PO2 Annague), who was designated as the poseur-buyer, Police Inspector Quesada (Inspector Quesada), PO3 Raul Dapula, and PO3 Paul Batnag (PO3 Batnag), who was designated as back-up.<sup>[5]</sup>

On November 17, 2009, the team carried out the operation. At around 10:40 p.m., the officers spotted Ternida along Quezon Avenue. PO2 Annague approached him, while PO3 Batnag stayed at a distance where he could observe the transaction.<sup>[6]</sup>

Ternida asked how much PO2 Annague would buy, to which PO2 Annague said P1,000.00 worth. Ternida then gave PO2 Annague one (1) heat-sealed plastic sachet of crystalline substance in exchange for PO2 Annague's P1,000.00 bill, which had been designated as the buy-bust money. After securing the sachet, PO2 Annague gave the pre-arranged signal to PO3 Batnag, who immediately approached and arrested Ternida. A Certificate of Inventory was subsequently prepared. The seized plastic sachet was then sent to the crime laboratory for forensic examination, where it tested positive for methamphetamine hydrochloride or shabu.<sup>[7]</sup>

In his defense, Ternida denied that there had been a buy-bust operation. He claimed that on November 17, 2009, he was about to cross Quezon Avenue on his way to Golden Society Restaurant when three (3) men, whom he later identified as Inspector Quesada, PO3 Batnag, and PO2 Annague, arrested him. Inspector Quesada held his neck, while PO3 Batnag and PO2 Annague handcuffed him.<sup>[8]</sup>

After frisking him, the officers took his cell phone and coin purse containing P150.00. They then brought him under a tree, where they took photos of him beside the plastic sachet. Afterwards, they brought him to the police station, where he was detained.<sup>[9]</sup>

In its July 6, 2011 Decision,<sup>[10]</sup> the Regional Trial Court found Ternida guilty beyond reasonable doubt of the offense charged. The dispositive portion of the Decision read:

**WHEREFORE**, premises considered, accused **ROLANDO TERNIDA y Munar** is hereby found **GUILTY** beyond reasonable doubt of the crime of violation of Section 5, Article II of Republic Act No. 9165 and is sentenced to suffer the penalty of life imprisonment and a fine of five hundred thousand pesos (Php500,000.00).

SO ORDERED.<sup>[11]</sup> (Emphasis in the original)

On appeal,<sup>[12]</sup> Ternida argued that the prosecution failed to preserve the identity and integrity of the *corpus delicti*. He pointed out that the seized item was not marked with the date of seizure, which meant that it could not be distinguished from other evidence that may have been in the police officer's possession. Moreover, he claimed that the drugs allegedly seized were not photographed. He asserted that the prosecution did not give justifiable grounds for the apprehending officers' failure to comply with the chain of custody requirements under the law.<sup>[13]</sup>

Ternida also pointed out that the witnesses who had signed the Certificate of Inventory were not presented in court. Moreover, he claimed that the arresting officers contradicted each other as to the witnesses' presence during the buy-bust.

PO2 Annague testified that the barangay officials and media representatives witnessed the buy-bust operation itself, while PO3 Batnag testified that they were called only after the arrest.<sup>[14]</sup>

Moreover, Ternida asserted that no Certificate of Coordination with the Philippine Drug Enforcement Agency was presented, and that the police officers themselves admitted that they did not coordinate with the Philippine Drug Enforcement Agency during the surveillance and monitoring operations before Ternida's arrest. He also claimed that PO2 Annague's and PO3 Batnag's testimonies on their coordination with the Philippine Drug Enforcement Agency were not only inconsistent with each other, but also inconsistent with the Pre-Operation Report and Coordination Sheet presented by the prosecution.<sup>[15]</sup>

Ternida also claimed that the prosecution did not present the official Physical Sciences Report regarding the shabu, and offered only the initial laboratory report, which was "issued exclusively for the inquest ... pending the release of the official chemistry report[.]"<sup>[16]</sup>

Ternida also insisted that the prosecution did not establish the chain of custody of the seized item.<sup>[17]</sup>

Finally, Ternida maintained that PO2 Annague had motive to plant evidence to arrest him. He claimed that it was improbable for Ternida to sell drugs to PO2 Annague, considering that PO2 Annague had previously arrested Ternida in a commotion incident.<sup>[18]</sup>

The Office of the Solicitor General, representing plaintiff-appellee People of the Philippines, countered in its Brief<sup>[19]</sup> that PO2 Annague's testimony was sufficient to establish the chain of custody.<sup>[20]</sup> As to PO2 Annague having previously arrested Ternida, it inscrutably asserted that "it [was] impossible for appellant to sell shabu to someone whom he [had] previously known as a policeman."<sup>[21]</sup> In any case, the Office of the Solicitor General insisted that the presumption that police officers have performed their duties with regularity applies in this case.<sup>[22]</sup>

In its October 30, 2013 Decision,<sup>[23]</sup> the Court of Appeals affirmed the Regional Trial Court's findings *in toto*. The dispositive portion of the Decision read:

**WHEREFORE**, in view of the foregoing premises, the instant appeal is hereby ordered **DISMISSED**, and the appealed decision rendered by Branch 66 of the RTC of San Fernando City, La Union in Criminal Case No. 8514 on 06 July 2011 is **AFFIRMED in toto**.

**SO ORDERED.**<sup>[24]</sup> (Emphasis in the original)

Thus, Ternida filed a Notice of Appeal. In its December 5, 2013 Resolution,<sup>[25]</sup> the Court of Appeals gave due course to Ternida's appeal and elevated the case records to this Court.<sup>[26]</sup> Accused-appellant and plaintiff-appellee, in compliance with this Court's July 23, 2014 Resolution,<sup>[27]</sup> filed their respective Manifestations on September 9, 2014<sup>[28]</sup> and September 26, 2014.<sup>[29]</sup>

For this Court's resolution is the issue of whether or not accused-appellant Rolando Ternida y Munar is guilty beyond reasonable doubt of illegal sale of dangerous drugs.

Accused-appellant should be acquitted.

To convict an accused of the illegal sale of dangerous drugs, the prosecution must not only prove that the sale took place, but also present the *corpus delicti* in evidence. In doing this, the prosecution must establish the chain of custody of the seized items<sup>[30]</sup> to prove with moral certainty the identity of the dangerous drug seized.<sup>[31]</sup>

Article II, Section 21 of the Comprehensive Dangerous Drugs Act provides the procedures that the apprehending team must observe to comply with the chain of custody requirements in handling seized drugs. The first step upon seizure mandates:

(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[.]

That the photographing and physical inventory of the seized drugs must be done immediately where seizure had taken place minimizes the possibility that evidence may be planted. Noncompliance with this legally mandated procedure, upon seizure, raises doubt that what was submitted for laboratory examination and as evidence in court was seized from an accused.<sup>[32]</sup>

Here, the prosecution failed to provide any evidence that the allegedly seized drugs were photographed upon seizure, in the presence of the accused. That no photograph of the seized drugs was offered in evidence raises questions as to whether the specimen submitted for laboratory examination was seized from accused-appellant in the buy-bust operation.

Worse, the prosecution did not even address the apprehending team's failure to photograph the seized items. In plaintiff-appellee's brief, the Office of the Solicitor General argued that even if there was a failure to observe the mandated process, this Court has held that it is irrelevant to the prosecution of the criminal case:

Even assuming *arguendo* that there is a deviation from the cited provision, the same does not affect the prosecution of the case. It does not render the evidence gathered inadmissible and certainly could not reasonably lead to the acquittal of appellant. As held by the Supreme Court, the failure of arresting officers to comply with a Dangerous Drugs Board (DDB) regulation is a matter strictly between the DDB and arresting officers and is totally irrelevant to the prosecution of the criminal case. There is no provision or statement in any 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. Indeed, the commission of the crime of illegal sale of dangerous drug is considered consummated once the sale is established and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the DDB. In the case at bar, the elements of illegal sale of dangerous drugs was clearly proven by the prosecution.<sup>[33]</sup> (Citations omitted)

In support of this argument, the Office of the Solicitor General cited *People v. De los Reyes*,<sup>[34]</sup> a 1994 case where this Court rejected the accused's argument that the arresting officers failed to comply with a 1979 Dangerous Drugs Board regulation. Such reliance-despite the passage of the Comprehensive Dangerous Drugs Act in 2002, which expressly requires the apprehending team to seize the drugs in a specific way-is misplaced, outdated, and rejected.

Still, conviction may be sustained despite noncompliance with the chain of custody requirements if there were justifiable grounds provided. This was only expressly codified into the law with the passage of Republic Act No. 10640 in 2014, five (5) years after the buy-bust operation had been conducted. Nonetheless, at the time of the buy-bust, the Implementing Rules and Regulations of the Comprehensive Dangerous Drugs Act is already in effect. It states:

(a) ... *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the 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[.]<sup>[35]</sup>

This Court has expounded on this provision in *People v. Miranda*:<sup>[36]</sup>

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 - which is now crystallized into statutory law with the passage of RA 10640 - provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 - under justifiable grounds - will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.** Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.

In *People v. Almorfe*, **the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the , integrity and value of the**