

FIRST DIVISION

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

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

D E C I S I O N

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 Gaylon 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 he 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 the buy-bust money prior to the operation.

Ruling 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 fee 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]: