

SECOND DIVISION

[G.R. No. 193003, July 13, 2011]

**FRANCISCO IMSON Y ADRIANO, PETITIONER, VS. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

R E S O L U T I O N

CARPIO, J.:

The Case

This is a petition^[1] for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 11 March 2010 Decision^[2] and 21 July 2010 Resolution^[3] of the Court of Appeals in CA-G.R. CR No. 30364. The Court of Appeals affirmed the 2 August 2005 Decision^[4] of the Regional Trial Court (RTC), National Capital Judicial Region, Malabon City, Branch 72, in Criminal Case Nos. 28218-MN and 28219-MN, finding petitioner Francisco A. Imson (Imson) and Rolando S. Dayao (Dayao) guilty beyond reasonable doubt of illegal possession of dangerous drugs.

The Facts

On 24 January 2003, at around 9:30 p.m., a confidential informant arrived at the District Drug Enforcement Unit office in Langaray, Caloocan City. The confidential informant advised PO1 Gerry Pajares (Pajares), PO1 Noli Pineda (Pineda) and other policemen that Imson was selling shabu at Raja Matanda Street, San Roque, Navotas. District Drug Enforcement Unit Chief P/Supt. Reynaldo Orante formed a team to conduct a buy bust operation, with Pajares acting as poseur buyer.

Pajares, Pineda, the confidential informant, and other policemen arrived at Raja Matanda Street at around 10:30 p.m. There, they saw Imson talking with Dayao. Thereafter, they saw Imson giving Dayao a transparent plastic sachet containing white crystalline substance. Pajares approached the two men and introduced himself. He immediately apprehended Imson while Pineda ran after Dayao who tried to escape. The policemen confiscated two plastic sachets containing the suspected shabu.

The policemen brought Imson and Dayao to the Langaray Police Station where Imson and Dayao executed their joint sworn statements and where PO1 Ariosto B. Rana marked the two plastic sachets with "RDS" and "FIA." The two plastic sachets were sent to the Philippine National Police - Northern Police Crime Laboratory Office for examination. Both tested positive for shabu.

Third Assistant State Prosecutor Marcos filed two informations dated 27 January 2003 for illegal possession of dangerous drugs against Imson and Dayao.

The RTC's Ruling

In its 2 August 2005 Decision, the RTC found Imson and Dayao guilty beyond reasonable doubt of illegal possession of dangerous drugs. The RTC held:

The denial, sort of alibi and insinuated claim of evidence planting put up by the two accused in these cases as their defense cannot be sustained by the Court.

Dayao would want the Court to believe that at past 10:30 in the evening, he would be playing "kara y krus" along a street. This is hard to believe. The playing of "kara y krus" would require that it be done in a well lighted place, preferably during day time. While the possibility that it can be played during the night cannot be ruled out, it is not the normal time of the day to play "kara y krus". And "kara y krus" is a form of illegal gambling. You do not openly play it along a street/near a street corner.

Imson, on the other hand, maintained that he was preparing food for dinner. While dinner may be taken even late in the evening, it is not usual for a man to do so. There must be an explanation for having a late dinner. In these cases, Imson did not offer any explanation for preparing to have dinner at past 10:30 in the evening.

Additionally, the two accused did not claim that there was any ill motive that made the policemen concoct a tale that resulted in the filing of these cases against them.

The denial made by the two accused cannot prevail. Denial, like alibi is a weak defense in criminal prosecution. It cannot prevail over positive, clear and convincing testimony to the effect that a crime was committed and the accused committed the same (*P. vs. Belibet*, 197 SCRA 587).

The insinuated claim of the accused to the effect that the shabu must have been planted by the police deserves little or scant consideration. It is the usual defense of those accused of violating the Dangerous Drugs Act of 2002 and, before that, of then existing laws on illegal drugs (*refer to P. vs. Nicolas, et al., G.R. No. 114116, February 1, 1995*).

On the other hand, the evidence of the prosecution tend to show that a buy bust operation was about to be conducted by reason of a report that accused Imson was selling shabu. It was no longer undertaken because Imson was immediately seen handing shabu to Dayao. This resulted in the arrest of the two accused who were both found in possession of shabu. This version of the police is a reasonable one.^[5]

Imson and Dayao appealed to the Court of Appeals.

The Court of Appeals' Ruling

In its 11 March 2010 Decision, the Court of Appeals affirmed the RTC's 2 August

2005 Decision. The Court of Appeals held:

We x x x find no merit in Appellants' contention that they should be acquitted because of the allegedly procedural lapses committed by the police operatives who failed to conduct a physical inventory of the subject specimen and to photograph the same resulting in the failure of the prosecution to prove their guilt of the crime charged.

On this regard, the required procedure on the seizure and custody of drugs as provided under Section 21, paragraph 1, Article II of R.A. No. 9165 pertinently provides:

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.

The aforecited section is implemented by Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, which states:

x x x

Sec. 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: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; 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:

x x x

To the mind of this Court, granting *arguendo* that the police operatives team failed to faithfully implement the post-operational requirement on the inventory and photographing of the seized drugs as required by Section 21 of RA 9165, nevertheless, jurisprudence has it that non-compliance with the procedure shall not invalidate the legitimate drug operation conducted by the police operatives. On this point, the pronouncement of the Supreme Court in *People v. Bralaan* is highly relevant, thus:

x x x

Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefore, 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.

x x x

Notably, the aforecited ruling was echoed by the Supreme Court in *People v. Pringas*, viz:

x x x

Non-compliance by the apprehending/buy-bust team with Section 21 is not fatal as long as there is justifiable ground therefore, and as long as the integrity and the evidentiary