

## THIRD DIVISION

[ G.R. No. 187483, April 14, 2010 ]

**ARNEL BALARBAR Y BIASORA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

### RESOLUTION

**NACHURA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision<sup>[1]</sup> dated October 28, 2008 and its Resolution<sup>[2]</sup> dated April 2, 2009 in CA-G.R. CR No. 31116. The assailed Decision affirmed the decision of the Regional Trial Court (RTC)<sup>[3]</sup> dated July 11, 2007, convicting petitioner Arnel B. Balarbar of Violation of Article II, Section 11, Republic Act (R.A.) No. 9165; while the assailed Resolution denied petitioner's motion for reconsideration.

The case arose from the following facts:

On May 26, 2005, Police Officer (PO)<sup>1</sup> Ernesto Aquino, Senior Police Officer (SPO)<sup>2</sup> Enrique Columbino, PO2 Jesus Gerald Manaois, and PO2 Roberto de Vera of the Dagupan City Police Station, assigned at the Intelligence and City Anti-Illegal Drug Special Operation Task Force, were ordered to conduct a surveillance at the Muslim Area, Bonuan, Tondaligan, Dagupan City, reputed as a haven of drug pushers and users. When they arrived at the site at around 2:30 p.m., PO2 Manaois and PO2 Aquino saw petitioner coming out from the house of a certain Untah, a well-known drug pusher. PO2 Aquino asked petitioner, "*Taga saan ka brod?*" but the latter continued to walk and pretended not to hear the question. As the two police officers were following him, petitioner dropped something from his hands, which, after verification, turned out to be a plastic sachet of *shabu*. PO2 Manaois held petitioner's hand and asked him if the plastic sachet belonged to him, and he answered in the negative. After informing petitioner of his constitutional rights, the arresting officers brought him to the police station and indorsed him to the police investigator.<sup>[4]</sup>

The confiscation receipt was prepared but petitioner refused to sign it. PO2 Manaois and PO2 Aquino marked the confiscated plastic sachet of *shabu* and submitted the same to the crime laboratory for examination. The examination yielded positive results for *shabu*.<sup>[5]</sup> Petitioner was thus charged in an Information for Violation of Article II, Section 11, R.A. No. 9165 for having in his possession, custody and control *shabu* contained in a small heat-sealed plastic sachet weighing more or less 0.10 gram.<sup>[6]</sup> Upon arraignment, petitioner pleaded "not guilty."

For his part, petitioner set up the defense of denial and frame-up. He explained that on that fateful afternoon, he was looking for his friends when suddenly, the police

officers approached him and pointed at him as the owner of the plastic sachet of *shabu* that they picked up from the street.<sup>[7]</sup>

After trial on the merits, the RTC found petitioner guilty as charged and sentenced him to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine of P300,000.00. Petitioner's appeal was dismissed by the CA. Hence, the instant petition on the sole issue of:

WHETHER THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE REGIONAL TRIAL COURT FINDING HEREIN PETITIONER GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.<sup>[8]</sup>

Petitioner questions his conviction primarily because the prosecution allegedly failed to establish the identity of the confiscated plastic sachet of *shabu*.

We find no reason to reverse petitioner's conviction. Hence, we affirm but with modification on the penalty imposed.

When this Court is asked to go over the evidence presented by the parties and to analyze, assess and weigh the same to ascertain if the trial court, as affirmed by the appellate court, was correct in according superior credit to this or that piece of evidence and, eventually, to the totality of the evidence of one party or the other, the Court will, ordinarily, demur. When the trial court's factual findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon the Court.<sup>[9]</sup>

We would like to stress that non-compliance with the requirements set forth in R.A. No. 9165 on the custody and disposition of confiscated or seized drugs, under justifiable grounds, shall not render void and invalid the seizures and custody of said items as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.<sup>[10]</sup>

The records show that the integrity and evidentiary value of the drugs seized from petitioner were properly preserved and safeguarded. In this case, the plastic sachet of *shabu* was properly marked before a letter-request was prepared for the crime laboratory to conduct the examination. From the time the illegal drug was seized from petitioner until the time the chemical examination was conducted thereon, its integrity was preserved. It was not shown to have been contaminated in any manner. Its identity, quantity and quality remained untarnished, and was sufficiently established.<sup>[11]</sup> Besides, the integrity of the evidence is presumed to be preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Petitioner bears the burden of proving that the evidence was tampered or meddled with to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.<sup>[12]</sup>

Hence, we agree with the trial court, as affirmed by the CA, that the prosecution's evidence proved beyond reasonable doubt that petitioner is guilty of Violation of