

## FIRST DIVISION

[ G.R. No. 191069, November 15, 2010 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
SULPICIO SONNY BOY TAN Y PHUA, ACCUSED-APPELLANT.**

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

This is an appeal from the October 26, 2009 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03245 entitled *People of the Philippines v. Sulpicio Sonny Boy Tan y Phua*, which affirmed the December 18, 2007 Decision<sup>[2]</sup> in Criminal Case No. 06-426 of the Regional Trial Court (RTC), Branch 65 in Makati City. The RTC found accused-appellant Sulpicio Sonny Boy Tan y Phua guilty of violation of Section 11, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

#### **The Facts**

The charge against accused-appellant stemmed from the following Information:

That on or about the 20<sup>th</sup> day of February, 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug, and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody and control, 120 tablets of Valium 10 mg weighing a total of nineteen point six (19.6) grams, said tablets contain Diazepam which is a dangerous drug, in violation of the above-cited law.

Contrary to law.<sup>[3]</sup>

On March 21, 2006, accused-appellant was initially arraigned, and he pleaded "not guilty" to the charge against him. However, on March 22, 2006, his counsel *de oficio*, Atty. Clarence S. Dizon, filed a motion to allow accused-appellant to withdraw his earlier plea and for reinvestigation of the case. Seeing as there was no objection from the prosecution, the RTC granted the motion.

After finding that there exists probable cause against accused-appellant for violation of Sec. 11, Art. II of RA 9165, the prosecution filed on July 11, 2006 a motion to set the case for arraignment and trial.<sup>[4]</sup> The motion was granted by the RTC.<sup>[5]</sup>

Thus, on July 18, 2006, accused-appellant, assisted by counsel *de officio*, Atty. Eliza B. Yu, re-entered his previous plea of "not guilty" to the offense charged.<sup>[6]</sup>

During pre-trial, the parties entered into stipulation with regard to the Final Investigation Report and the Acknowledgment Receipt issued by the Makati City Police Station through Police Officer 2 (PO2) Rafael Castillo.<sup>[7]</sup> Likewise, the parties stipulated as to the testimony of the forensic chemist, Police Senior Inspector Richard Allan B. Mangalip, who established the existence of the request for drug test dated February 20, 2006 and the result dated February 22, 2006,<sup>[8]</sup> yielding positive result for the presence of Diazepam, a dangerous drug.<sup>[9]</sup>

After the pre-trial conference, trial on the merits ensued.

During the trial, the prosecution presented as its witness Senior Police Officer 2 (SPO2) Edmundo Geronimo. Thereafter, the defense counsel stipulated as merely corroborative the testimonies of PO1 Victoriano Cruz, Jr., SPO1 Carlo Quilala, and PO3 Giovanni Avendano.

On the other hand, the defense presented as its sole witness, Sonny Boy, accused-appellant himself.

From the evidence adduced by the prosecution, it appears that on February 20, 2006, at around 1:15 in the morning, SPO2 Geronimo, SPO1 Quilala, PO3 Avendano, and PO1 Cruz of the Makati City Philippine National Police (PNP) conducted a manhunt operation against a suspect in a robbery case involving Korean nationals along P. Burgos, *Barangay* Poblacion, Makati City.<sup>[10]</sup> While on board their civilian vehicle, they chanced upon a male individual selling certain items to two foreigners. They heard him say, "Hey Joe, want to buy Valium 10, Cialis, Viagra?"<sup>[11]</sup> Curious, they inquired and the male individual told them that he was selling Viagra and Cialis, while, at the same time, showing them the contents of his bag which yielded 120 tablets of Valium 10.<sup>[12]</sup>

The male individual, who later turned out to be Sonny Boy, was immediately searched and placed under arrest, after which they informed him of the nature of his apprehension and of his constitutional rights. Sonny Boy was then brought to the office of the Station Anti-Illegal Drugs Special Operations Task Force (SAID-SOTF), where the items recovered from him were marked and inventoried by PO1 Cruz. The items were turned over to the duty investigator.<sup>[13]</sup>

In contrast, Sonny Boy interposed the defense of denial. He maintained that he was merely watching cars as a parking boy along P. Burgos when two men suddenly held and invited him for questioning.<sup>[14]</sup> They asked him if he knew any drug pushers and, if he did, to identify them. When he was unable to do so, they charged him for violation of Sec. 11, Art. II of RA 9165, which is the subject of the instant case.

### **Ruling of the Trial Court**

After trial, the RTC found accused-appellant guilty of the crime. The dispositive

portion of its December 18, 2007 Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused, SULPICIO SONNY BOY TAN y PHUA, **GUILTY**, beyond reasonable doubt of the charge for violation of Sec. 11 Art. 11, RA 9165 and sentences him to suffer the penalty of LIFE IMPRISONMENT and to pay a fine of Four Hundred Thousand (P400,000.00).

x x x x

SO ORDERED.<sup>[15]</sup>

On appeal to the CA, accused-appellant disputed the lower court's finding of his guilt beyond reasonable doubt of the crime charged. He argued that the prosecution failed to establish every link in its chain of custody and that the warrantless search and arrest done by the police officers were illegal.

### **Ruling of the Appellate Court**

On October 26, 2009, the CA affirmed the judgment of the lower court finding that the prosecution succeeded in establishing, with moral certainty, all the elements of illegal possession of dangerous drugs. The dispositive portion of the CA Decision reads:

**WHEREFORE**, premises considered, the decision of the Regional Trial Court in Crim. Case No. 06-426 dated December 18, 2007, finding accused-appellant Sulpicio Sonny Boy Tan y Phua, guilty beyond reasonable doubt of violation of Section 11, Article II, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, is **AFFIRMED WITH MODIFICATION** in that accused-appellant is sentenced to suffer the penalty of life imprisonment and to pay a **fine** of **Five Hundred Thousand Pesos (P500,000.00)**.

**SO ORDERED.**<sup>[16]</sup>

Accused-appellant timely filed a notice of appeal from the decision of the CA.

### **The Issues**

Accused-appellant assigns the following errors:

I.

THE COURT A *QUO* GRAVELY ERRED IN ADMITTING THE PROHIBITED DRUGS IN EVIDENCE DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN ITS CHAIN OF CUSTODY.

II.

THE COURT A *QUO* GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS SEARCH AND ARREST AS ILLEGAL.

III.

THE COURT A *QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.<sup>[17]</sup>

**Our Ruling**

The appeal has no merit.

**Chain of Custody Was Properly Established**

Accused-appellant maintains in his *Brief* that the police officers failed to mark, inventory, and photograph the prohibited items allegedly seized from him at the time of his apprehension. Further, he contends that "the prosecution failed to establish how the prohibited items, which were marked by PO1 Cruz, received and inventoried by PO2 Castillo, were turned over to PO1 Mendoza for delivery to the PNP Crime Laboratory for examination."<sup>[18]</sup> He argues that "[t]o successfully prove that the chain of custody was unbroken, every link in the chain, meaning everyone who held and took custody of the specimen, must testify as to that degree of precaution undertaken to preserve it."<sup>[19]</sup>

Such argument must fail.

The Implementing Rules and Regulations (IRR) of RA 9165 provides:

**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:

(a) The apprehending officer/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. (Emphasis supplied.)

Evidently, the law itself lays down exceptions to its requirements. Thus, contrary to the assertions of accused-appellant, Sec. 21 of the IRR need not be followed with pedantic rigor. It is settled that non-compliance with Sec. 21 does not render an accused's arrest illegal or make the items seized inadmissible.<sup>[20]</sup> What is imperative is "the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused."<sup>[21]</sup>

As a mode of authenticating evidence, the chain of custody rule requires that the admission or presentation of an exhibit, such as the seized prohibited drugs, be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.<sup>[22]</sup> As held by this Court in *Malillin v. People*, this would ideally include the testimonies of all persons who handled the specimen, viz:

x x x from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.<sup>[23]</sup>

In the instant case, there was substantial compliance with the law and the integrity of the drugs seized was preserved. The testimony of SPO2 Geronimo categorically established the manner by which the prohibited drugs were handled from the moment they were seized from accused-appellant up to the time they were turned over to the duty officer and investigator at SAID-SOTF, who, in turn, turned them over to the PNP Crime Laboratory for examination. All this was narrated by SPO2 Geronimo, as follows:

Prosecutor Henry M. Salazar:

Q: Mr. Witness, last February 20, 2006, about 1:15 in the early morning, can you tell us where were you?

SPO2 Eduardo Geronimo:

A: On that particular date and time, 1:15 a.m., February 20, 2006, we are conducting a manhunt operation against the