

THIRD DIVISION

[G.R. No. 179940, April 23, 2008]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NORBERTO DEL MONTE Y GAPAY @ OBET, ACCUSED-APPELLANT.**

D E C I S I O N

CHICO-NAZARIO, J.:

Assailed before Us is the Decision^[1] of the Court of Appeals in CA-G.R. CR-H.C. No. 02070 dated 28 May 2007 which affirmed with modification the Decision^[2] of the Regional Trial Court (RTC) of Malolos, Bulacan, Branch 78, in Criminal Case No. 3437-M-02, finding accused-appellant Norberto del Monte, *a.k.a.* Obet, guilty of violation of Section 5,^[3] Article II of Republic Act No. 9165, otherwise known as "Comprehensive Dangerous Drugs Act of 2002."

On 11 December 2002, accused-appellant was charged with Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002. The accusatory portion of the information reads:

That on or about the 10th day of December 2002, in the municipality of Baliuag, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there wilfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine Hydrochloride weighing 0.290 gram.^[4]

The case was raffled to Branch 78 of the RTC of Malolos, Bulacan and docketed as Criminal Case No. 3437-M-02.

When arraigned on 20 January 2003, appellant, assisted by counsel *de officio*, pleaded "Not Guilty" to the charge.^[5] On 17 February 2003, the pre-trial conference was concluded.^[6] Thereafter, trial on the merits ensued.

The prosecution presented as its lone witness PO1 Gaudencio M. Tolentino, Jr., the poseur-buyer in the buy-bust operation conducted against appellant, and a member of the Philippine National Police (PNP) assigned with the Philippine Drug Enforcement Agency (PDEA) Regional Office 3/Special Enforcement Unit (SEU) stationed at the Field Office, Barangay Tarcan, Baliuag, Bulacan.

The version of the prosecution is as follows:

On 10 December 2002, at around 3:00 o'clock in the afternoon, a confidential informant went to the office of the PDEA SEU in Barangay Tarcan, Baliuag, Bulacan

and reported that appellant was selling *shabu*. Upon receipt of said information, a briefing on a buy-bust operation against appellant was conducted. The team was composed of SPO2 Hashim S. Maung, as team leader, PO1 Gaudencio Tolentino, Jr. as the poseur-buyer, and PO1 Antonio Barreras as back-up operative. After the briefing, the team, together with the confidential informant, proceeded to Poblacion Dike for the execution of the buy-bust operation.

When the team arrived at appellant's place, they saw the appellant standing alone in front of the gate. The informant and PO1 Tolentino approached appellant. The informant introduced PO1 Tolentino to appellant as his friend, saying "*Barkada ko, user.*" PO1 Tolentino gave appellant P300.00 consisting of three marked P100 bills.

[7] The bills were marked with "GT JR," PO1 Tolentino's initials. Upon receiving the P300.00, appellant took out a plastic sachet from his pocket and handed it over to PO1 Tolentino. As a pre-arranged signal, PO1 Tolentino lit a cigarette signifying that the sale had been consummated. PO1 Barreras arrived, arrested appellant and recovered from the latter the marked money.

The white crystalline substance [8] in the plastic sachet which was sold to PO1 Tolentino was forwarded to PNP Regional Crime Laboratory Office 3, Malolos, Bulacan, for laboratory examination to determine the presence of the any dangerous drug. The request for laboratory examination was signed by SPO2 Maung. [9] Per Chemistry Report No. D-728-2002, [10] the substance bought from appellant was positive for methamphetamine hydrochloride, a dangerous drug.

The testimony of Nellson Cruz Sta. Maria, Forensic Chemical Officer who examined the substance bought from appellant, was dispensed after both prosecution and defense stipulated that the witness will merely testify on the fact that the drugs subject matter of this case was forwarded to their office for laboratory examination and that laboratory examination was indeed conducted and the result was positive for methamphetamine hydrochloride. [11]

For the defense, the appellant took the witness stand, together with his common-law wife, Amelia Mendoza; and nephew, Alejandro Lim.

From their collective testimonies, the defense version goes like this:

On 10 December 2002, appellant was sleeping in his sister's house in Poblacion Dike when a commotion woke him up. His nephew, Alejandro Lim, was shouting because the latter, together with appellant's common-law wife, Amelia Mendoza, and a niece, was being punched and kicked by several police officers. When appellant tried to pacify the policemen and ask them why they were beating up his common-law wife and other relatives, the policemen arrested him, mauled him, punched him on the chest, slapped him and hit him with a *palo-palo*. He sustained swollen face, lips and tooth. His common-law wife was likewise hit on the chest with the *palo-palo*.

The policemen then took appellant and his common-law wife to a house located in the middle of a field where the former demanded P15,000.00 for their liberty. The next day, appellant was brought to the police station.

Amelia Mendoza identified PO1 Tolentino and PO1 Barreras as the police officers who manhandled them and who demanded P15,000.00 so that she and appellant could

go home. The following day at 6:00 a.m., she said her child and cousin arrived with the P15,000.00. She was released but appellant was detained. She does not know why the police officers filed this case against appellant. What she knows is that they were asking money from them.

Alejandro Lim merely corroborated the testimonies of appellant and Amelia Mendoza.

On 8 March 2004, the trial court rendered its decision convicting appellant of Violation of Section 5, Article II of Republic Act No. 9165, and sentenced him to life imprisonment and to pay a fine of P5,000,000.00. The dispositive portion of the decision reads:

WHEREFORE, the foregoing considered, this Court hereby finds accused Norberto del Monte y Gapay @ Obet GUILTY beyond reasonable doubt of the offense of Violation of Section 5, Art. II of R.A. 9165 and sentences him to suffer the penalty of LIFE IMPRISONMENT and a fine of P5,000,000.00. With cost.

The drugs subject matter of this case is hereby ordered forfeited in favor of the government. The Branch of this Court is directed to turn over the same to the Dangerous Drugs Board within ten (10) days from receipt hereof for proper disposal thereof.^[12]

The trial court found the lone testimony of PO1 Gaudencio M. Tolentino, Jr. to be credible and straightforward. It established the fact that appellant was caught selling *shabu* during an entrapment operation conducted on 10 December 2002. Appellant was identified as the person from whom PO1 Tolentino bought P300.00 worth of *shabu* as confirmed by Chemistry Report No. D-728-2002. On the other hand, the trial court was not convinced by appellant's defense of frame-up and denial. Appellant failed to substantiate his claims that he was merely sleeping and was awakened by the screams of his relatives who were being mauled by the police officers.

Appellant filed a Notice of Appeal on 10 March 2004.^[13] With the filing thereof, the trial court directed the immediate transmittal of the entire records of the case to us.^[14] However, pursuant to our ruling in *People v. Mateo*,^[15] the case was remanded to the Court of Appeals for appropriate action and disposition.^[16]

On 28 May 2007, the Court of Appeals affirmed the trial court's decision but reduced the fine imposed on appellant to P500,000.00. It disposed of the case as follows:

WHEREFORE, the appeal is **DISMISSED** and the decision dated March 8, 2004 of the RTC, Branch 78, Malolos, Bulacan, in Criminal Case No. 3437-M-02, finding accused-appellant Norberto del Monte guilty beyond reasonable doubt of Violation of Section 5, Article II, Republic Act No. 9165, and sentencing him to suffer the penalty of life imprisonment is **AFFIRMED** with the **MODIFICATION** that the amount of fine imposed upon him is reduced from P5,000,000.00 to P500,000.00.^[17]

A Notice of Appeal having been timely filed by appellant, the Court of Appeals forwarded the records of the case to us for further review.^[18]

In our Resolution^[19] dated 10 December 2007, the parties were notified that they may file their respective supplemental briefs, if they so desired, within 30 days from notice. Both appellant and appellee opted not to file a supplemental brief on the ground they had exhaustively argued all the relevant issues in their respective briefs and the filing of a supplemental brief would only contain a repetition of the arguments already discussed therein.

Appellant makes a lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSE CHARGED DESPITE THE INADMISSIBILITY OF THE EVIDENCE AGAINST HIM FOR FAILURE OF THE ARRESTING OFFICERS TO COMPLY WITH SECTION 21 OF R.A. 9165.^[20]

Appellant anchors his appeal on the arresting policemen's failure to strictly comply with Section 21 of Republic Act No. 9165. He claims that pictures of him together with the alleged confiscated *shabu* were not taken immediately upon his arrest as shown by the testimony of the lone prosecution witness. He adds that PO1 Tolentino and PO1 Antonio Barreras, the police officers who had initial custody of the drug allegedly seized and confiscated, did not conduct a physical inventory of the same in his presence as shown by their joint affidavit of arrest. Their failure to abide by said section casts doubt on both his arrest and the admissibility of the evidence adduced against him.

At the outset, it must be stated that appellant raised the police officers' alleged non-compliance with Section 21^[21] of Republic Act No. 9165 for the first time on appeal. This, he cannot do. It is too late in the day for him to do so. In *People v. Sta. Maria*^[22] in which the very same issue was raised, we ruled:

The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed, the **police officers' alleged violations** of Sections 21 and 86 of Republic Act No. 9165 **were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.** (Emphases supplied.)

In *People v. Pringas*,^[23] we explained that non-compliance with Section 21 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. In the case at bar, appellant never questioned the custody and disposition of the drug that was taken from him.