

THIRD DIVISION

[G.R. NO. 170234, February 08, 2007]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BERNARDO F. NICOLAS, 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. 01191 dated 23 August 2005 which affirmed *in toto* the decision ^[2] of the Regional Trial Court (RTC) of Pasig City, Branch 164, in Criminal Case No. 11566-D, finding accused-appellant Bernardo Felizardo Nicolas, a.k.a. Bernie, guilty of violation of Section 5,^[3] Article II of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

In an Information dated 7 August 2002, accused-appellant Bernardo Felizardo Nicolas, a.k.a. Bernie, was charged with Violation of Section 5, Article II of Republic Act No. 9165, the accusatory portion thereof reading:

On or about August 6, 2002, in Pasig City and within the jurisdiction of this Honorable Court, the accused, who is not being authorized by law, did, then and there willfully, unlawfully and feloniously sell, deliver and give away to PO2 Danilo S. Damasco, one (1) heat-sealed transparent plastic sachet containing 0.42 gram of white crystalline substance which was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drug, in violation of the said law.^[4]

The case was raffled to Branch 164 of the RTC of Pasig City and docketed as Criminal Case No. 11566-D.

When arraigned on 30 September 2002, appellant, assisted by counsel *de officio*, pleaded "Not Guilty" to the charge.^[5] The Pre-Trial Conference of the case was terminated on the same day. Thereafter, the case was heard.

The prosecution presented two witnesses: PO2 Danilo S. Damasco^[6] and SPO2 Dante Zipagan,^[7] both members of the Station Drug Enforcement Unit of the Pasig Police Station. The testimony of Police Inspector Delfin A. Torregoza, Forensic Chemical Officer, Eastern Police District Crime Laboratory Office, was, however, dispensed with after both prosecution and defense stipulated that the specimen^[8] submitted in court is the same one mentioned in the Request for Laboratory Examination^[9] and in Chemistry Report No. D-1501-02E,^[10] and that same was regularly examined by said forensic chemical officer.

For the defense, appellant^[11] took the witness stand together with his common-law

wife, Susan dela Cruz Villasoto,^[12] and brother, Jose Nicolas.^[13]

The diametrical versions of the People and the accused are narrated by the trial court as follows:

VERSION OF THE PEOPLE

On August 6, 2002, at about 9:30 o'clock in the evening, a confidential informant stepped inside the office of the Station Drug Enforcement Unit of the Pasig Police Station, Pasig City and informed SPO4 Numeriano S. De Lara, Officer In-Charge of that unit, that a certain alias Bernie was selling shabu at his place along Santiago Street, in Barangay Bagong Ilog, Pasig City. Immediately, SPO4 De Lara organized a team to conduct a surveillance operation and the entrapment of alias Bernie, if warranted by the situation. The team was composed of PO2 Danilo S. Damasco, PO2 Montefalcon, PO2 Orig and SPO2 Zipagan who was the team leader. PO2 Damasco was designated to act as poseur-buyer in the buy-bust operation while the other police officers would serve as his back-ups to assist in the possible apprehension of alias Bernie. After a short briefing, the team of police operatives, including the confidential informant, proceeded to the target place at Santiago Street, Bagong Ilog, Pasig City. SPO2 Dante Zipagan, the team leader, instructed the confidential informant to first check and look for the whereabouts of alias Bernie. The informant, after five minutes, returned and informed the team that he found alias Bernie in front of his house and the team decided to proceed with the planned entrapment of alias Bernie. PO2 Damasco and the informant then walked towards the house of alias Bernie while the back-up police officers placed themselves strategically in different positions where they could see PO2 Damasco and the informant in the act of negotiating with alias Bernie. PO2 Damasco and the informant saw alias Bernie conversing with a male person in front of his house. After the informant greeted alias Bernie, he introduced PO2 Damasco to alias Bernie whose real name is Bernardo Nicolas, the accused herein, as a user of shabu and would like now to buy some Php500.00 worth of the substance from him. Alias Bernie, responded that he still had one piece of that stuff and was willing to sell it to poseur-buyer Damasco. Accused asked for the money which was pre-marked by Damasco with initials DSD (Exh. D-1) which stands for the name of Danilo S. Damasco. Damasco then handed the five hundred peso bill (Exh. D) to accused who accepted it. Accused, in return, gave Damasco one plastic sachet containing white crystalline substance which looked like that of shabu. For a moment, PO2 Damasco examined the plastic sachet and its content and then announced to the accused he was a police officer and arresting him for violation of the drugs law. Accused Bernardo Nicolas alias Bernie got shocked and surprised. As Damasco was holding the accused, the back-up officers arrived and assisted him in handling the accused. Damasco recovered the buy-bust money and the police team took him away to their station, where he was turned over to a police investigator together with the small plastic sachet of suspected shabu that Damasco had purchased from the accused. SPO4 Numeriano S. De Lara sent the small plastic sachet containing white crystalline substance which was then marked with EXH.-A BFN/080602 to the

Eastern Police District Crime Laboratory Office at St. Francis St., Mandaluyong City, as per his letter memorandum dated August 6, 2002 (Exhs. B and B-1). The specimen was received at the EPD Crime Laboratory office by P/Insp. Delfin Torregoza, a Forensic Chemical Officer, who weighed and examined the specimen which he found to contain 0.42 gram of white crystalline substance which was tested positive for methamphetamine hydrochloride as per his Chemistry Report No. D-1501-02E (Exhs. C and C-1). Accused Bernardo F. Nicolas was consequently charged with Violation of Section 5, Article II of R.A. 9165.

VERSION OF DEFENSE

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[Appellant] testified that on August 6, 2002 at about 10:00 o'clock in the evening, he was outside of his house conversing with his brother, Jose Nicolas, and a friend named Arnold Mendez. He had just came (sic) out of his house in order to close the billiard salon that he owned. As they were then huddled in animated conversation, two motor vehicles stopped in front of his billiard parlor, a car and a van. The passengers of the van alighted and one of them pointed a gun at him. As accused was not familiar with the men, he could not recognize them. He learned, later on, that the man who poked a gun at him was PO2 Danilo Damasco who was accompanied by other persons numbering about four or five of them. Damasco warned him not to move, holding and waiving in his hand a plastic sachet which Damasco said he bought from accused Bernardo Nicolas. The police officers then proceeded to put handcuffs on the hands of the accused, in spite of his protest denying anything to do with the plastic sachet of alleged shabu being displayed by Damasco. The police officers also handcuffed and arrested Arnold Mendez. Jose Nicolas did not allow himself to be arrested and handcuffed. When he sensed that he would be handcuffed, he immediately fled and ran into his house, locking himself in. Luckily for him, the police officers did not pursue him any longer. He just watched the incident by peeping through the window of his house. Accused Bernardo Nicolas alias Bernie and Arnold Mendez, were then forced into the police vehicle and taken to the police station, although Nicolas showed resistance which forced the police officers to physically carry him into their vehicle. Accused Bernard Nicolas was then charged with Violation of Section 5, Article II, R.A. 9165.

Appellant denies the charge. He insists that there was no buy-bust operation and that the *shabu* (methamphetamine hydrochloride) allegedly sold by him to the poseur buyer was planted evidence. He claims that the trumped-up charge is a way of getting even with him because he, together with his wife, had filed a case before the National Police Commission (NAPOLCOM) for grave misconduct against several policemen (PO2 Joel Tapeç, PO1 Christopher Semana and five John Does) assigned at the Station Drug Enforcement Unit of the Pasig Police Station, for entering and robbing their house on 5 February 2002. He further claims that the policemen who arrested him for allegedly selling *shabu* were the John Does mentioned in the complaint he and his wife filed with the NAPOLCOM.

In its decision dated 8 October 2003, the trial court found appellant guilty beyond

reasonable doubt of the crime charged and sentenced him to life imprisonment. The dispositive portion of the decision reads:

WHEREFORE, the court finds accused BERNARDO F. NICOLAS GUILTY beyond reasonable doubt, as principal of violation of Section 5, Article II, R.A. 9165 and hereby imposes upon him the penalty of life imprisonment and a fine of five hundred thousand pesos (P500.00),^[14] with the accessory penalties provided under Section 35 thereof.^[15]

From the decision, appellant filed a Notice of Appeal informing the court that he is appealing the same to the Court of Appeals.^[16] Though the Notice of Appeal specified that the decision is being appealed to the Court of Appeals, the trial court nonetheless forwarded the records of the case to the Supreme Court pursuant to Section 3, Rule 122 of the Rules of Court.^[17]

On 22 November 2004, appellant filed an appellant's brief before the Supreme Court. On 31 March 2005, the Office of the Solicitor General filed the People's brief.^[18]

Since the penalty imposed by the trial court was life imprisonment, the case was remanded to the Court of Appeals for appropriate action and disposition pursuant to our ruling in *People v. Mateo*.^[19]

On 23 August 2005, the Court of Appeals rendered its decision affirming in full the decision of the trial court.^[20] Appellant filed a Notice of Appeal assailing the decision before the Supreme Court.^[21]

With the elevation of the records of the case to the Supreme Court, the parties were required to submit their respective supplemental briefs, if they so desire, within 30 days from notice.^[22] The parties opted not to file supplemental briefs on the ground that they have fully argued their positions in their respective briefs.^[23]

Appellant assigns as errors the following:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FAITH AND CREDENCE TO THE UNRELIABLE TESTIMONIES OF THE PROSECUTION WITNESSES AND IN TOTALLY DISREGARDING THE VERSION OF THE DEFENSE.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

Appellant observed that (1) the policemen did not conduct surveillance first; (2) they did not have any agreement as regards the money to be used in buying the *shabu*; and (3) they failed to talk about any signal to inform the back-up policemen that the transaction has been consummated. He contends that the absence of these things is unusual and that it made even more doubtful that the buy-bust operation

really took place.

These observations will not purge him of the charge.

Settled is the rule that the absence of a prior surveillance or test-buy does not affect the legality of the buy-bust operation. There is no textbook method of conducting buy-bust operations. The Court has left to the discretion of police authorities the selection of effective means to apprehend drug dealers.^[24] A prior surveillance, much less a lengthy one, is not necessary especially where the police operatives are accompanied by their informant during the entrapment.^[25] Flexibility is a trait of good police work.^[26] In the case at bar, the buy-bust operation was conducted without need of any prior surveillance for the reason that the informant accompanied the policemen to the person who is peddling the dangerous drugs.

Appellant faults the policemen because there was no agreement or discussion among themselves as regards the marked money and the pre-arranged signal.

From the records, it is clear that it was PO2 Damasco who prepared the marked money^[27] as shown by his initials on the top right corner of the P500.00 bill that was used in purchasing the *shabu* from appellant.^[28] The fact that the team leader and the other members of the team did not discuss or talk about the marked money does not necessarily mean that there was no buy-bust operation. As explained by SPO2 Zipagan, since PO2 Damasco was the designated poseur buyer it was the latter's discretion as to how to prepare the marked money. It is not required that all the members of the buy-bust team know how the marked money is to be produced and marked inasmuch as they have their respective roles to perform in the operation. As this Court sees it, the other members of the team left the matter of the marked money to one person - the poseur buyer - because it was he who was to deal directly with the drug pusher.

As to the absence of a pre-arranged signal, same is not fatal to the cause of the prosecution. The employment of a pre-arranged signal, or the lack of it, is not indispensable in a buy-bust operation. What determines if there was, indeed, a sale of dangerous drugs is proof of the concurrence of all the elements of the offense. A buy-bust operation is a form of entrapment which has repeatedly been accepted to be a valid means of arresting violators of the Dangerous Drugs Law.^[29] The elements necessary for the prosecution of illegal sale of drugs are (1) the identity of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefore.^[30] What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.^[31]

In the case under consideration, all these elements have been established. The witnesses for the prosecution clearly showed that the sale of the drugs actually happened and that the *shabu* subject of the sale was brought and identified in court. The poseur buyer (PO2 Damasco) categorically identified appellant as the seller of the *shabu*. His testimony was corroborated by SPO2 Zipagan. Per Chemistry Report No. D-1501-02E of Police Inspector Delfin A. Torregoza, the substance, weighing 0.42 gram, which was bought by PO2 Damasco from appellant in consideration of P500.00, was examined and found to be methamphetamine