

## **NINETEENTH DIVISION**

**[ CA-G.R. CR - HC NO. 01375, July 31, 2014 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NOEL BUENAFE Y PLACIDO ALIAS "BRUNO", ACCUSED-APPELLANT.**

### **D E C I S I O N**

**LAGURA-YAP, J.:**

Noel Buenafe (accused-appellant) appeals the Decision<sup>[1]</sup> dated May 16, 2011 rendered by the Regional Trial Court, Branch 15, Roxas City in Criminal Case No. C-123-09 and Criminal Case No. C-124-09. In the former case, accused-appellant is convicted of Violation of Section 5, Article II of R.A 9165 or the Comprehensive Dangerous Drugs Act, while in the latter case, he is convicted with Violation of Section 11, also under Article II of the Act.

The dispositive portion<sup>[2]</sup> of the decision reads:

WHEREFORE, foregoing premises considered, this court finds the accused, NOEL BUENAFE:

1. In Criminal Case No. 123-09, GUILTY beyond reasonable doubt of the crime of Violation of Section 5, Article II of R.A. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and hereby sentences him to suffer the penalty of Life Imprisonment and a fine of P500,000.00
2. In criminal Case No. C-124-09, GUILTY beyond reasonable doubt of the crime of Violation of Section 11, Article II of R.A. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and hereby sentences him to suffer the penalty of imprisonment of Twelve (12) Years and One (1) Day to Twenty (20) Years of Reclusion Temporal and a Fine of P300,000.00

The trial prosecutor is directed to inform the Board of the final termination of this case, which, in turn, shall request the court for leave to turn over the representative samples of the illegal drugs presented in evidence to the PDEA for proper disposition and destruction within twenty four hours from receipt of this case.

SO ORDERED.

The Information<sup>[3]</sup> filed on June 1, 2009, against accused Noel Buenafe under Criminal Case No. C-123-09, alleges:

That on or about the 7<sup>th</sup> day of May 2009, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the

above-named accused, with deliberate intent, did then and there willfully, unlawfully and feloniously sell, distribute and deliver to PO3 ANTONIO BUENVENIDA (a PNP "poseur-buyer"), one small sachet of suspected methamphetamine hydrochloride or "shabu" weighing 0.02 grams, a dangerous drug, without authority to sell and distribute the same.

CONTRARY TO LAW.

The Information<sup>[4]</sup> also filed on even date against accused Noel Buenafe under Criminal Case No. C-124-09, alleges:

That on or about the 7<sup>th</sup> day of May 2009, in the City of Roxas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused with deliberate intent, did then and there willfully, unlawfully and feloniously have in his possession and control one heat-sealed transparent sachet and containing methamphetamine hydrochloride or "shabu", a dangerous drug, weighing 0.05 grams, a dangerous drug, without being authorized by law to possess the same.

CONTRARY TO LAW.

The accused entered a "NOT GUILTY" plea during the arraignment<sup>[5]</sup> on August 17, 2009.

#### **Facts of the case**

The prosecution presented Police Officers Buenvenida, Datiles, Ibañez, Ecto and Paulin who testified that they were members of the Intelligence and Investigation Division, Anti-Illegal Drug Special Operations Group of Roxas City. They received an information on the proliferation of illegal drugs particularly in McKinley, Roxas City. The group conducted a surveillance that resulted in the identification of the accused as one of the drug dealers. A buy-bust operation was planned to be conducted in the early morning of May 7, 2009 and for this purpose a four-man team was organized to carry out the plan. The team were composed of PO3 Antonio Buenvenida as the poseur-buyer; PO2 Datiles as back-up and PO3 Paulin and PO2 Ibañez as additional back-up. The team prepared three (3) one hundred peso bills and one (1) two hundred peso bill as marked money, all of which were reflected in the police blotter. The team arrived around 4:05 A.M of May 7, 2009 at the designated place with their asset at the corner of McKinley and San Roque Sts, Roxas City. Thereafter, the accused appeared and the asset introduced PO3 Buenvenida as "scorer" who needed to score. The accused told PO3 Buenvenida that a small sachet of shabu was worth Php 500.00. The poseur-buyer immediately gave the Php 500.00 marked money and the accused in turn gave the plastic sachet of shabu. PO3 Buenvenida then executed the pre-arranged signal by lighting a cigarette, as a sign that the transaction was completed. The rest of the team rushed to the scene. PO3 Buenvenida introduced himself as police officer. The accused tried to escape but he was subdued by the other police officers and arrested him. The accused was bodily searched by Police Officer Datiles who found another sachet of shabu and the marked money. The plastic sachets of shabu were marked and the accused was then brought to the Police Station of Roxas City for recording and investigation.

The police witnesses identified in court the Certificate of Inventory, marked money,

Police Blotter Report, photographs, spot report to the PDEA and the Chemistry Report.

For his part, accused Noel Buenafe testified that at about 5:00 o'clock in the morning of May 7, 2009, he was waiting for a tricycle to ferry him to his home at San Roque st., Roxas City. Suddenly, two (2) men approached and handcuffed him (accused). Accused was surprised and he asked the men what wrong he had done. The men responded by telling him not to move. They introduced themselves as policemen. They (policemen) searched him (accused) and found his three (3) hundred peso bills and prescription. The policemen made him board the tricycle and brought him to the police station of Roxas City. When they arrived, he was investigated and he was asked to stripped off his clothes. He was bodily searched again but they found nothing. The accused said he was brought to Roxas Memorial Hospital for medical check up. He was found normal and no body injuries were noted.

After the trial, the RTC promulgated its judgment of conviction dated May 15, 2009. Aggrieved, accused filed a Notice of Appeal<sup>[6]</sup> dated May 26, 2011.

On May 16, 2011, the trial court issued an order (Mittimus) transferring the person of the accused-appellant to the New Bilibid Prison, Muntinlupa City.<sup>[7]</sup>

#### ASSIGNMENT OF ERRORS

##### I

THE TRIAL COURT ERRED IN NOT FINDING THAT THE BUY-BUST OPERATION WAS ILLEGAL.

##### II

THE TRIAL COURT ERRED IN NOT FINDING THAT THE SEARCH OF APPELLANT AND THE SUPPOSED SEIZURE OF ILLEGAL ITEMS FROM APPELLANT WAS ILLEGAL.

##### III

THE TRIAL COURT ERRED IN NOT FINDING THAT THE INTEGRITY OF THE CORPUS DELICTI WAS DUBIOUS.

##### IV

THE TRIAL COURT ERRED IN NOT FINDING THAT THERE WAS A GAPING HOLE IN THE CHAIN OF CUSTODY OF THE ITEMS PURPORTEDLY TAKEN FROM APPELLANT.

##### V

THE TRIAL COURT ERRED IN FINDING THAT THE POLICE OFFICERS ARE ENTITLED TO THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF THEIR DUTY DESPITE THE IRREGULARITIES THAT THE POLICE OFFICERS COMMITTED IN THE HANDLING OF THE EVIDENCE AGAINST

THE APPELLANT.

VI

THE TRIAL COURT ERRED IN FINDING THAT THE PROSECUTION HAS PROVEN BEYOND REASONABLE DOUBT ACCUSED-APPELLANT'S GUILT.

### **Arguments**

Accused-appellant argues in his Brief that the buy-bust operation was illegal. There was no documentary proof or written report that was adduced by the prosecution. There was no entry in the police blotter of the surveillance made by the police officers against the accused-appellant. The purported surveillance made by the police officers appears to be concocted as it was not established that the accused-appellant was engaged in illegal activities. The illegality of the buy-bust operation was further strengthened due to the fact that the buy-bust money was not immediately authenticated by the Clerk of Court after the money was seized from the accused-appellant. It took five (5) months before the buy-bust money was authenticated by the Clerk of Court.

According to the accused-appellant the taking of photograph and the marking of the seized items were not shown to have been made in the presence of the accused-appellant, a representative from the media, the DOJ and any elected public official. Moreover, the arresting officers failed to comply with the mandatory requirements laid down under Section 21, paragraph 1, Article II of R.A 9165.

Furthermore, the prosecution did not even offer any justifiable ground in deviating from the standard procedure prescribed under the law. In the case of *People of the Philippines vs. Alberto Alcuizar*<sup>[8]</sup>, the Supreme Court held that the dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.

The accused-appellant describes that there is a gaping hole in the chain of custody of the sachets of the illegal drugs. The name of the two persons who delivered the alleged two sachets of shabu was not indicated in the Chemistry Report. PO3 Dexter Paulin's allegation that he was the one who delivered the sachet was self-serving. This statement was not corroborated by any of the personnel in the crime laboratory. There is a probability that the sachets found positive for Methamphetamine Hydrochloride may not be the sachets purportedly recovered from the accused-appellant. Accused-appellant thus asserts that he should be acquitted since the prosecution failed to establish his guilt.

The Solicitor General in his Appellee's Brief counter argues that the testimony of PO3 Buenvenida amply proved all the elements of the crime of illegal sale of dangerous drugs. This is demonstrated when accused-appellant handed a sachet of shabu to PO3 Buenvenida, after the latter had handed to him (accused-appellant) the marked and unmarked money worth P500.00. Meanwhile on the charge of possession of illegal drugs or "shabu", it is clear from the testimony of PO1 Datiles

that accused-appellant was caught in *flagrante delicto* of possessing two sachets of shabu. One was sold to the poseur-buyer and the other was seized from him during the body search. Accused-appellant failed to show any proof that he was authorized by law to possess them. Since accused-appellant was caught in *flagrante delicto*, there is therefore, a *prima facie* evidence of *animus possidendi* on the accused-appellant's part.

It is the contention of the Solicitor General that bare denial of the accused-appellant and alleged frame-up cannot prevail over direct testimonies of the arresting officers. In the case of *People vs. Urbano*<sup>[9]</sup>, the Supreme Court said that courts generally view with disfavor the defense of denial, on account of its aridity and the facility with which the accused can concoct it to suit their defense. Negative and self-serving, it deserves no weight in law when substantiated by clear and convincing evidence. In the present case, the accused-appellant did not present any evidence to prove his innocence. He merely denied that he was involved in any drug transaction and claimed that he was framed up.

The Solicitor General also asseverates that the procedures laid down under Section 21(a), Article II of R.A. 9165 admits of certain exception. Non-compliance with Section 21(a) of R.A. 9165 does not render an accused's arrest illegal or the items seized from the accused-appellant inadmissible. What is essential 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-appellant.<sup>[10]</sup> It can be gleaned from the testimonies of the prosecution witnesses that the police officers took the necessary precaution in documenting and securing the evidence seized after the buy-bust operation. The police officers immediately inventoried and photographed the illegal drugs and marked money recovered.

Finally, the Solicitor General says that the buy-bust operation conducted against the accused-appellant is valid. Accused-appellant is wrong to claim that the illegality of the buy-bust operation stems from the failure to document the surveillance conducted by the police officers. Well-settled is the rule that the absence of a prior surveillance or test buy does not affect the legality of the buy-bust operation. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment.<sup>[11]</sup>

### **THE COURT'S RULING**

The core issue in this case is whether or not clear and convincing evidence exists to support the conviction of the accused-appellant for violation of Sections 5 and 11, Article II of R.A. No. 9165.

#### ***In Criminal Case No. C-123-09***

In the case of *People of the Philippines v. Ryan Blanco y Sangkula*<sup>[12]</sup>, the Supreme Court provides for the elements necessary for the successful prosecution of illegal sale of drugs: 1.) the identity of the buyer and the seller, the object and the consideration of the sale; 2.) the delivery of the thing sold and the payment therefore. What is material is the proof that the transaction actually took place, coupled with the presentation before the court of the prohibited or regulated drug or the *corpus delicti*.