

FIRST DIVISION

[G.R. NO. 175928, August 31, 2007]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALVIN PRINGAS Y PANGANIBAN ACCUSED-APPELLANT.

DECISION

CHICO-NAZARIO, J.:

On appeal before Us is the Decision^[1] of the Court of Appeals in CA-G.R. CR-HC No. 00303 dated 31 August 2006 which affirmed *in toto* the decision^[2] dated 16 August 2004 of the Regional Trial Court (RTC) of Pasig City, Branch 154, convicting accused-appellant Alvin Panganiban Pringas of Violation of Sections 5,^[3] 11^[4] and 12^[5] of Republic Act No. 9165, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

On 25 April 2003, appellant was charged before the RTC of Pasig City with Violation of Sections 5, 11 and 12 of Republic Act No. 9165 under the following informations:

Criminal Case No. 12360-D

On or about April 22, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to sell, possess or otherwise use any dangerous drug, did then and there willfully, unlawfully and feloniously sell, deliver and give away to Police Officer Joselito Esmallaner, a police poseur buyer, one (1) small heat-sealed transparent plastic bag containing white crystalline substance weighing three (3) centigrams (0.03 grams), which was found positive to the test for methamphetamine hydrochloride (shabu), a dangerous drug, in violation of the said law.^[6]

Criminal Case No. 12361-D

On or about April 22, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control three (3) small heat-sealed transparent plastic bags containing white crystalline substance weighing, the following to wit:

- (a) twenty-five (25) decigrams (0.25 grams);
- (b) two (2) centigrams (0.02 grams); and
- (c) two (2) centigrams (0.02 grams).

for a total of twenty-nine (29) decigrams (0.29 grams), which were found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.^[7]

Criminal Case No. 12362-D

On or about April 22, 2003, in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess drug paraphernalia, did then and there willfully, unlawfully and feloniously have in is possession, custody and control, the following to wit:

(a) one (1) small tape-sealed transparent plastic bag containing four (4) smaller unsealed transparent plastic bags each with traces of white crystalline substance;

(b) one (1) improvised water pipes containing traces of white crystalline substance;

(c) two (2) empty strips of aluminum foil;

(d) one (1) pin;

(e) one (1) pair of scissors;

(f) one (1) improvised bamboo tongs;

(g) one (1) pack of empty small transparent plastic bag;

(h) one (1) improvised burner; and

(i) two (2) disposable lighters.

all are fit or intended for smoking, consuming, administering, injecting any dangerous drug into the body.^[8]

On 30 April 2003, appellant, having been charged without the benefit of a preliminary investigation, filed a motion for reinvestigation.^[9] On 14 May 2003, the trial court granted the motion and ordered the Pasig City Prosecutor to conduct a preliminary investigation.^[10] With the finding of the City Prosecutor that no cogent reason existed to modify or reverse its previous finding of probable cause against accused-appellant, the trial court set the cases for arraignment and trial.^[11]

When arraigned on 4 September 2003, appellant, with the assistance of counsel *de officio*, pleaded not guilty to the crimes charged.^[12]

During the pre-trial conference, appellant admitted the existence and the contents of the Request for Laboratory Examination^[13] and the Forensic Chemist Report,^[14] with the qualification that the subject of the forensic report was not taken from him, and if ever same was taken from him, it was obtained illegally.^[15]

With the termination of the pre-trial conference, the cases were heard jointly.

The prosecution presented two witnesses: PO1 Joselito Esmallaner^[16] and SPO3 Leneal Matias,^[17] both members of the Station Drug Enforcement Unit of the Pasig City Police Station.

The version of the prosecution is as follows:

On 22 April 2003, SPO4 Danilo Tuaño, Officer-in-Charge of the Station Drug Enforcement Unit of the Pasig City Police Station, designated PO1 Joselito Esmallaner to act as a poseur-buyer in a buy-bust operation to be conducted against appellant along Beverly Street, Barangay Buting, Pasig City. At around 10:30 p.m., the buy-bust team headed by SPO3 Leneal Matias arrived at the target area. PO1 Esmallaner and the informant proceeded to the unnumbered house of appellant, while SPO3 Matias and the other members of the team positioned themselves around ten (10) meters away to serve as back-up.

After the informant knocked on appellant's front door, the latter came out. Upon recognizing the informant, appellant asked, "*Pare, ikaw pala. Bibili ka ba?*" The informant who was standing next to PO1 Esmallaner replied "*Oo, itong kasama ko kukuha.*" Appellant then asked PO1 Esmallaner how much drugs he intended to buy to which PO1 Esmallaner replied, "P100 lang." PO1 Esmallaner thereafter gave a one hundred peso (P100.00) bill to the appellant. Thereafter, the appellant went inside the house. Appellant returned and handed to PO1 Esmallaner a plastic sachet containing a white crystalline substance later found to be *shabu*.^[18]

Upon receiving the plastic sachet, PO1 Esmallaner grabbed appellant's hand and got the P100.00 bill from the right front pocket of appellant's pants. He introduced himself as a police officer and informed the appellant of his violation and his constitutional rights. PO1 Esmallaner then marked the plastic sachet^[19] and placed his initials "JE" on the upper right portion of the P100.00^[20] bill with serial number FX230133.^[21]

After seeing that PO1 Esmallaner tried to grab the hand of appellant, who was able to run inside the house and tried to lock the door, SPO3 Matias and the other members of the team followed PO1 Esmallaner inside appellant's house. Matias saw three pieces of heat-sealed transparent plastic sachets^[22] containing a white crystalline substance which turned out to be *shabu*, two disposable lighters,^[23] six strips of aluminum foil with traces of *shabu*,^[24] improvised water pipe used as tooter,^[25] improvised burner,^[26] wooden sealer, small scissors,^[27] 14 pieces of transparent plastic sachets,^[28] and one small needle^[29] on top of a small chair (*bangkito*). The items confiscated were marked and turned over to the Investigator who requested laboratory examination on said items.

On 23 April 2003, Chemistry Report No. D-733-03E^[30] was issued with the conclusion that the four sachets, together with four other unsealed transparent plastic bags and a water pipe used as tooter, taken from appellant, were positive for Methamphetamine Hydrochloride (*shabu*). On the same date, poseur-buyer PO1

Esmallaner and team leader SPO3 Matias executed their Joint Affidavit of Arrest.^[31]

For the defense, appellant^[32] took the witness stand together with his common-law wife, Gina Dean.^[33]

Appellant and his common-law wife deny that a buy-bust occurred. Appellant claims that at about 10:00 p.m. of 22 April 2003, he and his common-law wife were with their three children in their house in Beverly Street, Buting, Pasig City, when somebody kicked the door of their house. Appellant was in the comfort room, while his common-law wife was in the bedroom taking care of their children. Thereafter, four persons, later identified as police officers Esmallaner, Mapula, Espares and Familiara, entered without any warrant of arrest or search warrant. He asked them what they wanted and he was told that they were going to arrest him. When he asked for the reason why he was being arrested, he was told that he would just be informed in their office. With his hands on his back, appellant was handcuffed. The policemen subsequently conducted a search in the house, but they neither recovered nor took anything. After that, appellant was brought to the police station, investigated and placed in jail. He added that the violent entry made by the policemen was witnessed by some of his neighbors, namely, Buboy, Macmac and Zaldy, who were then having a drinking session.

On 19 August 2004, the trial court promulgated its decision finding appellant guilty beyond reasonable doubt of the crimes charged. It disposed of the cases as follows:

WHEREFORE, premises considered, the accused **ALVIN PRINGAS** is hereby found **GUILTY** beyond reasonable doubt of Violation of Section 5 of R.A. 9165 (illegal sale of shabu) and he is hereby sentenced to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **P500,000.00**.

Accused **ALVIN PRINGAS** is also found **GUILTY** OF Violation of Section 11 of the same law and he is hereby sentenced to suffer the indeterminate penalty of **TWELVE (12) YEARS and ONE (1) DAY to FIFTEEN (15) YEARS** of imprisonment and to pay a fine of P400,000.00 and also of violation of Section 12 of R.A. 9165, and he is hereby sentenced to suffer imprisonment from **SIX (6) MONTHS (and) ONE (1) DAY** as minimum to **THREE (3) YEARS and ONE (1) DAY** as maximum, and to pay a fine of **P10,000.00**.

Considering the penalty imposed, the immediate commitment of the accused to the National Bilibid Prisons is ordered.

The Court fully realizes that the penalty prescribed by law for the offense committed by the accused is quite severe. However, the Court will not question the wisdom of the law and of the legislators who passed it. ***Dura lex, sed lex.*** The only thing that the Court can do is to recommend that the accused be pardoned after he shall have served the minimum period of the penalty imposed on him.^[34]

On 3 September 2004, appellant, through counsel, appealed the decision to the Court of Appeals *via* a Notice of Appeal.^[35] With the filing of the Notice of Appeal,

the trial court transmitted^[36] the records of the case to the Court of Appeals for review pursuant to *People v. Mateo*.^[37]

In its Decision dated 31 August 2006, the Court of Appeals dismissed appellant's appeal and affirmed *in toto* the decision of the trial court.^[38]

Unsatisfied, appellant appealed his conviction before this Court by way of a Notice of Appeal.^[39]

With the elevation of the records to the Court and the acceptance of the appeal, the parties were required to file their respective supplemental briefs, if they so desired, within 30 days from notice.^[40] The parties manifested that they were not filing supplemental briefs, arguing that the issues of the case had been discussed in their respective briefs.^[41]

Appellant makes a lone assignment of error, to wit:

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSES CHARGED DESPITE THE INADMISSIBILITY OF THE EVIDENCE HAVING BEEN OBTAINED IN VIOLATION OF SECTIONS 21 AND 86, REPUBLIC ACT NO. 9165.

Appellant argues that the apprehending police officers' failure to comply with the provisions (Sections 21 and 86) of Republic Act No. 9165 casts doubt on the validity of appellant's arrest and the admissibility of the evidence allegedly seized from him. He maintains that since the procurement of the evidence, both documentary and testimonial, during the buy-bust operation was violative of said law and of his constitutional right against illegal arrest, the same should not have been received in evidence to prove his guilt they being inadmissible under the law.

Appellant claims that the police officers violated Section 86 of Republic Act No. 9165 when the alleged buy-bust operation that led to the apprehension of appellant was conducted without the involvement of the Philippine Drug Enforcement Agency (PDEA). It is his contention that nowhere in the Joint Affidavit of Arrest executed by the members of the arresting team was it shown that the buy-bust operation was conducted with the assistance, coordination, knowledge or consent of the PDEA.

We find this claim untenable.

In the Joint Affidavit of Arrest, it is stated that "That, on or about 10:30 PM April 22, 2003, as instructed by SPO4 DANILO TUAÑO, OIC/SDEU, this Office effected a coordination to (sic) Metro Manila Regional Office of PDEA and formed a team of SDEU operatives with a confidential informant to conduct anti-narcotics/Buy-bust operation against the said person x x x."^[42] This portion of the affidavit clearly negates appellant's claim that the buy-bust operation subject of the case was not with the involvement of the PDEA. Even assuming *ex gratia argumenti* that the aforementioned statement was not contained in the affidavit, appellant's claim of lack of involvement of the PDEA will render neither his arrest illegal nor the evidence seized from him inadmissible. Quoting *People v. Sta. Maria*,^[43] we resolved the very same issue in this wise: