



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **11 January 2021** which reads as follows:*

“**G.R. No. 254489 [Formerly UDK 16668]** (*Alfonso Amida y Bula v. People of the Philippines*). — This is a Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court which seeks to set aside and reverse the Decision² of the Court of Appeals (CA) – Cebu City in CA-G.R. CR-HC No. 02671. The CA affirmed the Decision³ of Regional Trial Court (RTC), Branch 2, Borongan City, Eastern Samar in Criminal Case Nos. 12191 and 12193, finding petitioner Alfonso Amida y Bula (Amida) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (RA) No. 9165 (Illegal Sale of Dangerous Drugs) and Section 1 of Presidential Decree (PD) No. 1866 (Illegal Possession of Firearms).

ANTECEDENTS

Amida was charged with Illegal Sale of Dangerous Drugs and Illegal Possession of Firearms, under the following Information:⁴

Crim. Case No. 12191 (Violation of Section 5, Article II of R.A. No. 9165):

That at about 9:50 o'clock (*sic*) in the morning of June 30, 2010 at [Brgy.] Sabang Suribao, Borongan, Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused with intent of gain, did then and there willfully, unlawfully and feloniously contracted the sale of four (4) bricks of cocaine (dangerous drugs) to SPO2 Jose Rey Serrona weighing about 4 kilograms at Forty Thousand (40,000.00) pesos per kilogram without authority to possess/sell the same.

¹ *Rollo*, pp. 10-26.

² *Id.* at 30-45; penned by Associate Justice Emily R. Alifo-Geluz, with the concurrence of Associate Justices Pamela Ann Abella Maxino and Edward B. Contreras.

³ *Id.* at 10; main Decision not attached to the *rollo*.

⁴ *Id.* at 30-31.

CONTRARY TO LAW.

Crim. Case No. 12193 (Violation of Section 1 of PD No. 1866):

That at about 9:50 o'clock (*sic*) in the morning of June 30, 2010 at [Brgy.] Sabang Suribao, Borongan, Eastern Samar, Philippines and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully, unlawfully and feloniously have in his possession, control one (1) unit cal. .45 pistol with seven (7) live ammos while being arrested by member of the AIDSOTF, Camp Crame, Quezon City and PNP members of Borongan PNP for sale of dangerous drugs (cocaine) without proper license and/ or authority to possess the same, to the damage and prejudice of the government.

CONTRARY TO LAW.

Arraigned, Amida pleaded not guilty. Trial ensued. The prosecution, through its witnesses, alleged that, in June 2010, the Anti-Illegal Drug Special Operation Task Force (AIDSOTF) of Camp Crame, Quezon City formed a team with the Regional Intelligence Division, Police Regional Office VIII to conduct buy-bust operations against those who were reported to have been selling cocaine in Eastern Samar. This was in response to news reports of proliferation of sale of cocaine in the area. The buy-bust team arrived in Eastern Samar on June 26, 2010 and stayed at Pebbles Resort in Bato, Borongan, Eastern Samar.

On June 30, 2010, at around 6:00 a.m., the buy-bust team received a report from a confidential informant that an *alias* "Ampong" was looking for a buyer of the four (4) bricks of cocaine that he had been keeping. Ampong allegedly desired to meet the prospective buyer along the National Highway in Brgy. Suribao Sabang, Borongan, Eastern Samar (National Highway) to ascertain first whether the buyer had money. The buy-bust team proceeded to the National Highway and met with "Ampong," who was then riding a black motorcycle. SPO2 Jose Rey Serrona (SPO2 Serrona) showed ₱160,000.00 to "Ampong." Thereafter, "Ampong" told SPO2 Serrona to meet him again at the same place between 9:30 a.m. and 10:00 a.m. SPO2 Serrona then went back to Pebbles Resort, where the other police officers stayed and informed their team leader of the developments of the case. They planned to conduct the buy-bust inside the van of the buy-bust team.⁵

At around 9:20 a.m., the buy-bust team went back to the same place at the National Highway where they previously met with "Ampong." The first van included SPO2 Serrona as *poseur-buyer*, PO3 Barit⁶ as driver, and PO2 Raymund Amidar (PO2 Amidar) as one of the arresting officers. The other police officers were on a second van parked 50 meters ahead, facing the first van. "Ampong" then arrived on his

⁵ *Id.* at 32.

⁶ PO3 Barit's name was not indicated; *id.* at 31-32.

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motorcycle and parked near the first van, beside its opened door. "Ampong" boarded the van and showed his green backpack to SPO2 Serrona. Afterwards, SPO2 Serrona opened the bag and found four (4) bricks of cocaine. SPO2 Serrona then handed the wrapped marked boodle money to "Ampong." As soon as "Ampong" tried to unwrap the boodle money, SPO2 Serrona immediately seized "Ampong" and noticed that there was a gun tucked in his waist. PO3 Barit turned on the hazard light to signal the consummation of the sale and the second van immediately drove towards them. PO3 Barit arrested "Ampong" and informed him of his rights. "Ampong" was later identified as petitioner Amida.⁷

After the arrest, the buy-bust team brought Amida and the seized contraband to Pebbles Resort. At the resort, SPO2 Serrona marked the four (4) bricks of cocaine. The first brick covered in black rubber was marked with SPO2 Serrona's initials "JRS." The three (3) other bricks wrapped in transparent plastic were marked with "ABA 2," "ABA 3," and "ABA 4" and were initialed by SPO2 Serrona with "JRS." SPO2 Serrona also marked the firearm with his initials. The marking, inventory, and photography were witnessed in the presence of Amida himself; Lilia Arsenio, the Brgy. Chairperson of Brgy. Bato; Daisy Bellazar, a representative from Radyo ng Bayan; and Atty. Rio Afable, a public prosecutor.⁸

Afterwards, and while still within the premises of Pebbles Resort, SPO2 Serrona handed the confiscated items to PSI Vivienne Mae Malibago (PSI Malibago), the forensic chemist of PNP-Regional Crime Laboratory Office VIII who was also present during the marking and inventory of the contraband. PSI Malibago conducted a screening test on site which yielded positive for the presence of cocaine. PSI Malibago then placed the four (4) bricks of cocaine inside the marked green backpack, sealed it, and wrote her initials. PSI Malibago then brought the contraband to the PNP Crime Laboratory. The following day, PSI Malibago conducted a confirmatory test which yielded positive for the presence of cocaine. PSI Malibago then turned over the contraband to PO3 Lea Nartea (PO3 Nartea), their evidence custodian. PO3 Nartea brought the contraband to the court during trial.⁹

As for the illegal firearm seized pursuant to the warrantless arrest, the Firearm and Explosives Office, Camp Crame, Quezon City issued a Memorandum stating that Amida is not a licensed/registered firearm holder of a pistol with the brand of Colt Mark IV series 80, caliber .45 and with Serial Number 890012, and that the same was registered to one Melchesidic Pantohan of Punta Princesa, Cebu City.¹⁰

⁷ *Id.* at 32-33.

⁸ *Id.* at 34.

⁹ *Id.*

¹⁰ *Rollo*, p. 35.

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In his defense, Amida denied the charges and claimed that he was framed up. On the day of the arrest, Amida was on a motorcycle on his way to Brgy. Can-abong, Borongan City, Eastern Samar to get additional capital for buying copra when a white Innova overtook and flagged him. The men inside the van ascertained his identity and asked him to board the vehicle. Inside the van, Amida was tied to a seatbelt and a sack was placed on his head. The men asked Amida whether there was still cocaine in his possession other than the brick he surrendered to the police officers of Maydolong, Eastern Samar. When the sack was removed from Amida's head, he was already at Pebbles Resort.¹¹

In its Consolidated Decision dated August 11, 2017,¹² the RTC convicted Amida of violation of Section 5, Article II of RA No. 9165 and Illegal Possession of Firearms. The RTC held that while it is true that the contraband was not marked, inventoried, and photographed at Brgy. Sabang Suribao, Borongan, Eastern Samar where the items were seized, the prosecution sufficiently explained their non-compliance because the buy-bust team was unfamiliar with the place and there was a lingering perception that Samar was a National People's Army (NPA) rebel-infested area.¹³

On appeal, the CA affirmed the trial court's Decision.¹⁴ The CA found no irregularity in the marking and inventory at Pebbles Resort considering that some police officers were also at the resort.¹⁵ The CA also found the testimonies of the prosecution witnesses credible even though there was a failure to offer as evidence the Chain of Custody Form and the Turn Over of Confiscated Evidence Report.¹⁶

¹¹ *Id.* at 13.

¹² The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, the Court renders judgment as follows:

1. In Criminal Case No. 12191, the Court finds accused Alfonso Amida y Bula GUILTY beyond reasonable doubt of the offense of violation of Section 5, Article II of R.A. 9165. Accordingly, he is sentenced to suffer a prison term of LIFE IMPRISONMENT and to pay a fine of Six Hundred Thousand Pesos (P600,000.00).

The confiscated items, including the four (4) bricks of cocaine, are forfeited in favour of the government. The four (4) bricks of cocaine shall be transmitted to the PDEA for proper disposition.

The preventive imprisonment of the accused shall be credited in his favour.

2. In Criminal Case No. 12193, the Court finds accused Alfonso Amida y Bula GUILTY beyond reasonable doubt of Violation of P.D. 1866, as amended by R.A. 8294 (Illegal Possession of High Powered Firearm and Ammunition). Accordingly, applying the Indeterminate Sentence Law, he is hereby sentenced to suffer an indeterminate prison term of four (4) years, two (2) months and one (1) day of prision correccional, as minimum, to six (6) years and one (1) day of prision mayor, as maximum, and to pay a fine of Thirty Thousand Pesos (P30,000.00).

The confiscated firearm (Exhibit "A") shall be forfeited in favour of the government.

The preventive imprisonment of the accused in both charges shall be credited in his favor.

SO ORDERED; *id.* at 37.

¹³ *Id.* at 12.

¹⁴ *Supra* note 1; the dispositive portion of the CA Decision reads:

WHEREFORE, the instant appeal is DENIED. The Consolidated Decision dated August 11, 2017 of the Regional Trial Court (Branch 2) of Borongan City, Eastern Samar in Criminal Case Nos. 12191 and 12193, is AFFIRMED.

SO ORDERED. *Rollo*, p. 44.

¹⁵ *Id.* at 41.

¹⁶ *Id.* at 42.

Hence, this petition. Amida contends that the required procedure on the seizure and custody of drugs was not followed because the marking and inventory were conducted at Pebbles Resort and not at the place of arrest or nearest police station; that the prosecution failed to establish the integrity of the chain of custody because it failed to offer in evidence the Chain of Custody Form and the Turn Over of Confiscated Evidence Report; the statements of the witnesses were contradictory; and that the CA and the RTC erred in giving credence to the testimonies of the prosecution witnesses.

RULING

The petition is partly meritorious.

Foremost, we agree with the factual findings of the RTC and the CA that there was a valid buy-bust operation. The prosecution was able to establish, through the testimonies of the prosecution witnesses, the circumstances surrounding the buy-bust arrest from the initial contact of the *poseur-buyer* up to the consummation of the sale. The prosecution was able to positively identify the accused and was able to narrate in detail the procedures employed.

Specifically, in illegal sale of dangerous drugs, the contraband itself constitutes the *very corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.¹⁷ Thus, it is essential to ensure that the substance recovered from the accused is the same substance offered in court.¹⁸ Indeed, the prosecution must satisfactorily establish the movement and custody of the seized drug through the following links: (1) the confiscation and marking of the specimen seized from the accused by the apprehending officer; (2) the turnover of the seized item by the apprehending officer to the investigating officer; (3) the investigating officer's turnover of the specimen to the forensic chemist for examination; and (4) the submission of the item by the forensic chemist to the court.¹⁹ Here, records reveal a broken chain of custody.

Notably, the alleged crime happened before RA No. 10640²⁰ amended RA No. 9165. Thus, the original provisions of Section 21 and its Implementing Rules and Regulations (IRR) shall apply, to wit:

¹⁷ *People v. Partoza*, 605 Phil. 883, 891 (2009). See also *People v. Cariño*, G.R. No. 233336, January 14, 2019; *People v. Crispo*, 828 Phil. 416, 436-437 (2018); See *People v. Sanchez*, 827 Phil. 457, 472-473 (2018); *People v. Magsano*, 826 Phil. 947, 964-965 (2018); *People v. Manansala*, 826 Phil. 578, 586 (2018); *People v. Miranda*, 824 Phil. 1042, 1053-1054 (2018); and *People v. Mamangon*, 824 Phil. 728, 741 (2018).

¹⁸ *People v. Ismael*, 806 Phil. 21, 30-31 (2017).

¹⁹ *People v. Bugtong*, 826 Phil. 628, 638-639 (2018).

²⁰ RA No. 10640 took effect on August 7, 2014. See OCA Circular No. 77-2015 dated April 23, 2015. As amended, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public

[Section 21, paragraph 1, Article II of RA No. 9165]

(1) The apprehending 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. (Emphases supplied.)

[Section 21(a), Article II of the IRR of RA No. 9165]

(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 the 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.** (Emphases supplied.)

The chain of custody rule requires the conduct of inventory and photograph of the seized items “*immediately after seizure and confiscation,*” which is intended by law to be made immediately after, or at the place of apprehension. In warrantless seizures, the law and implementing rules allow the inventory and photograph as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending team, whichever is practicable. However, in earlier cases, we clarified that the deviation from the standard procedure in Section 21 will not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (1) there is justifiable ground for non-compliance; and (2) the integrity and evidentiary value of the seized items are properly preserved.²¹ The prosecution must explain the reasons behind the procedural lapses and must show that the integrity and evidentiary value of the seized evidence had been preserved.²²

official and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof.

²¹ *People v. De la Cruz*, 591 Phil. 259, 271 (2008).

²² *People v. Gadiana*, 644 Phil. 686, 694 (2010).

After Amida's arrest, the buy-bust team brought Amida to Pebbles Resort for the marking and inventory of the seized items. This is not the nearest police station or the nearest office of the apprehending officer or team contemplated. The CA and the RTC ruled that the prosecution sufficiently explained the non-compliance because the buy-bust team was unfamiliar with the place and there was a lingering perception that Samar was an NPA rebel-infested area. We disagree. SPO2 Serrona, the apprehending officer himself, testified that he did not receive any information or report on the presence of armed men or NPA rebels, to wit:

Q - Did you receive any information of presence of armed men in the area [where] the alleged seizure of this [sic] items were done?

A - There were none Sir.

Q - And there was likewise no report of presence of NPA or New People's Army isn't it?

A - None Sir.²³

The testimony of SPO2 Amidar, one of the arresting officers, also confirmed the number of the officers comprising the buy-bust team:

Q - How many were you who went there to Barangay Suribao?

A - The first van was three (3) persons, I cannot recall the second van, I think four (4) or five (5) persons, including the driver, Sir. (TSN September 23, 2011, page 9)

x x x x

Q - While you were there in Barangay Suribao, Borongan City, Eastern Samar, for the operation, there were coordination with the elements of Philippine National Police in Eastern Samar, isn't it?

A - Yes, Sir. (TSN September 23, 2011, page 16)²⁴

Given the unfounded fear of an NPA rebel attack and the numerical superiority of the buy-bust team, the prosecution's grounds for non-compliance with Section 21, Article II of RA No. 9165 are unjustified. Aside from this, the prosecution failed to offer in evidence the Chain of Custody Report Form and the Turn Over of Confiscated Evidence Report which are essential to confirm how the seized items passed from one person to another. This puts into serious doubt the integrity of the seized items. Yet, the CA and the RTC merely brushed aside this procedural lapse by finding the "testimonies of the prosecution witnesses worthy of weight and credence." However, even the testimonies of the prosecution witnesses are contradicting, SPO2 Serrona, the apprehending officer,

²³ *Rollo*, p. 12, citing TSN September 22, 2011, p. 82.

²⁴ *Id.* at 12-13.

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testified that he turned over the seized four (4) bricks of cocaine to SPO3 Conrado H. Caragdag, Jr. (SPO3 Caragdag) who then turned them over to Forensic Chemist PSI Malibago.²⁵ However, PSI Malibago testified that she received the cocaine directly from SPO2 Serrona and not from SPO3 Caragdag:

Q - Madam Witness when you conducted a field test, from whom did you receive the specimen?

A - I received the four (4) bricks of cocaine from SPO2 Serrona Sir. (TSN September 22, 2011, [p]age 17)²⁶

Taken together, these irregularities, namely, the non-compliance with Section 21, Article II of RA No. 9165, non-submission of the Chain of Custody Report Form and the Turn Over of Confiscated Evidence Report, and the contradicting testimonies of the prosecution witnesses, compromised the identity and integrity of the seized items. The utter disregard of the required procedures created a huge gap in the chain of custody. We reiterate that the provisions of Section 21, Article II of RA No. 9165 embody the constitutional aim to prevent the imprisonment of an innocent man. The Court cannot tolerate the lax approach of law enforcers in handling the very *corpus delicti* of the crime. Hence, Amida must be acquitted from the charge of illegal sale of dangerous drugs given the prosecution's failure to prove an unbroken chain of custody.

Nevertheless, we affirm Amida's conviction of Illegal Possession of Firearms. Verily, the search and confiscation of the firearm was an incident to Amida's arrest during the buy-bust operation. Since the buy-bust operation was established as legitimate, it follows that the warrantless search was also valid.²⁷

A successful prosecution of Illegal Possession of Firearms requires the concurrence of two (2) elements that: (a) the firearm exists; and (b) the accused who owned or possessed it does not have the corresponding license or permit to possess or carry the same.²⁸ Here, SPO2 Serrona positively identified Amida as the possessor of Colt Mark IV series 80, caliber .45 with Serial Number 890012, which was seized from him during the buy-bust operation. The prosecution identified the same firearm during the trial and offered the same in evidence. The Memorandum from the Firearms and Explosives Office declared that Amida "is not a licensed/registered firearm holder of one (1) pistol, Colt Mark IV series 80, caliber .45 with serial number 890012 *per* verification from records of this office."²⁹ Thus, Amida's conviction for illegal possession of firearms is in order.

²⁵ *Id.* at 17.

²⁶ *Id.* at 18.

²⁷ *People v. Marcelino*, 639 Phil 643, 652 (2010).

²⁸ *Peralta v. People*, 817 Phil. 554, 562 (2017).

²⁹ *Rollo*, p. 43.

pc/w

FOR THESE REASONS, the petition is **PARTLY GRANTED**. The Court of Appeals' Decision dated July 15, 2019 and Resolution dated February 19, 2020 in CA-G.R. CR-HC No. 02671 are **AFFIRMED** with **MODIFICATIONS**. Petitioner Alfonso Amida y Bula is **ACQUITTED** in Criminal Case No. 12191 for violation of Section 5, Article II of Republic Act No. 9165. However, petitioner's conviction in Criminal Case No. 12193 for violation of Section 1 of Presidential Decree No. 1866 is **AFFIRMED**.

This Court further **RESOLVES** to:

1. **GRANT** the motion of petitioner for extension of thirty (30) days from the expiration of the reglementary period within which to file a Petition for Review on Certiorari;
2. **NOTE** the letter dated November 10, 2020 of counsel for petitioner, submitting the attached postal money order checks indicating the correct payee; and
3. **NOTE** the payment made by counsel for petitioner in the amount of ₱4,530.00 for docket/legal fees under O.R. No. 0286317 dated November 11, 2020.

SO ORDERED. (Rosario, J., designated additional Member per Special Order No. 2797 dated November 5, 2020.)"

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

10 MAY 2021

ATTY. JUAN BAUTISTA A. BEATO, JR. (reg)
J.B.A. "Butch" Beato, Jr. Law Office
Counsel for Petitioner
164 Brgy. Bato, Borongan City
Eastern Samar 6800

OFFICE OF THE SOLICITOR GENERAL (reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

ROGELIO BUASAN y BENDAL (reg)
Petitioner
c/o The Superintendent
Abuyog Penal Colony
Abuyog, Leyte

THE SUPERINTENDENT (reg)
Abuyog Penal Colony
Abuyog, Leyte

THE DIRECTOR (reg)
Bureau of Corrections
1770 Muntinlupa City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 2
Borongan City, Eastern Samar
(Crim. Case Nos. 12191 & 12193)

COURT OF APPEALS (reg)
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Visayas Station
CA-G.R. CR-HC No. 02671

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