

## SECOND DIVISION

[ G.R. No. 237809, January 14, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
ROSALINA AURE Y ALMAZAN AND GINA MARAVILLA Y AGNES,<sup>[\*]</sup>  
ACCUSED-APPELLANTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this ordinary appeal<sup>[1]</sup> is the Decision<sup>[2]</sup> dated August 24, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08065, which affirmed the Judgment<sup>[3]</sup> dated November 16, 2015 and the Order<sup>[4]</sup> dated January 5, 2016 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Crim. Case No. Q-14-00697, finding accused-appellants Rosalina Aure y Almazan (Rosalina) and Gina Maravilla y Agnes (Gina; collectively, accused-appellants) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165,<sup>[5]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

#### The Facts

This case stemmed from an Information<sup>[6]</sup> filed before the RTC charging accused-appellants of violating Section 5, Article II of RA 9165. The prosecution alleged that at around one (1) o'clock in the afternoon of January 15, 2014, a team composed of members from the District Anti-Illegal Drugs – Special Operation Task Group (DAID-SOTG) of the Quezon City Police District conducted a buy-bust operation against accused-appellants during which one (1) plastic sachet containing white crystalline substance was recovered from them. After marking the plastic sachet at the place of arrest, the apprehending officers, together with accused-appellants, then proceeded to the DAID-SOTG headquarters in Camp Karingal, Quezon City, where the seized item was inventoried and photographed in the presence of a media representative. Thereafter, the seized item was brought to the crime laboratory where, upon examination,<sup>[7]</sup> the contents thereof yielded positive for 4.75 grams of methamphetamine hydrochloride or *shabu*, a dangerous drug.<sup>[8]</sup>

In defense, accused-appellants denied the charges against them, claiming instead, that they were just going about their personal matters when two (2) men suddenly grabbed them, and thereafter, dragged them to their vehicle and took them to Camp Karingal. Thereat, the men demanded P150,000.00 for their release, but since they could not produce the said amount, the instant criminal charge was filed against them. Notably, accused-appellants maintained that they only saw each other for the first time in Camp Karingal and that it was only during trial when they first laid their eyes on the plastic sachet purportedly seized from them.<sup>[9]</sup>

In a Judgment<sup>[10]</sup> dated November 16, 2015, the RTC found accused-appellants guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced them to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00.<sup>[11]</sup> The RTC found that the prosecution, through the testimony of the back-up arresting officer, Police Officer 3 Fernando Salonga (PO3 Salonga), had established the fact that accused-appellants indeed sold *shabu* to the poseur-buyer, Police Officer 3 Miguel Cordero (PO3 Cordero). In this regard, the RTC opined that the failure to present the testimony of PO3 Cordero is not indispensable to accused-appellants' conviction as PO3 Salonga attested to his knowledge of the afore-described transaction.<sup>[12]</sup> Aggrieved, accused-appellants separately moved for reconsideration,<sup>[13]</sup> which were, however, denied in an Order<sup>[14]</sup> dated January 5, 2016, thus, they appealed<sup>[15]</sup> to the CA.

In a Decision<sup>[16]</sup> dated August 24, 2017, the CA affirmed the RTC ruling. It held that despite the absence of the testimony of PO3 Cordero, the prosecution was nevertheless able to prove accused-appellants' commission of the crime charged through the testimony of another member of the buy-bust team, PO3 Salonga, who was inside a car just 10-15 meters away from where the sale transaction occurred. Further, the CA ruled that the police officers substantially complied with Section 21, Article II of RA 9165 even though PO3 Cordero was not able to testify as to the links of the chain of custody of the confiscated drug and in spite of the absence of the Department of Justice (DOJ) representative and the elected public official during the inventory.<sup>[17]</sup>

Hence, this appeal seeking that the conviction of accused-appellants be overturned.

### **The Court's Ruling**

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>[18]</sup> it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.<sup>[19]</sup> Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.<sup>[20]</sup>

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>[21]</sup> As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.<sup>[22]</sup> The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,<sup>[23]</sup> "a representative from the media **and** the Department of Justice (DOJ), and any elected public official";<sup>[24]</sup> or (b) if **after** the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service **or** the media."<sup>[25]</sup> The law requires the presence of these

witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."<sup>[26]</sup>

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."<sup>[27]</sup> This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."<sup>[28]</sup>

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>[29]</sup> As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>[30]</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>[31]</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>[32]</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,<sup>[33]</sup> and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.<sup>[34]</sup>

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.<sup>[35]</sup> Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.<sup>[36]</sup> These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.<sup>[37]</sup>

Notably, the Court, in *People v. Miranda*,<sup>[38]</sup> issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."<sup>[39]</sup>

In this case, a perusal of the Inventory of Seized/Confiscated Item/Property<sup>[40]</sup> dated January 15, 2014 readily reveals that while the inventory of the plastic sachet purportedly seized from accused-appellants was conducted in the presence of a

media representative, it was nevertheless done **without** the presence of any elected public official and DOJ representative, contrary to the afore-described procedure. When asked about this deviation from procedure, PO3 Salonga offered the following justification:

[Public Prosecutor Alexis G. Bartolome]: Mr. Witness, there are signatures appearing in this inventory receipt, there is a signature above the name PO3 Cordero, whose signature is this?

[PO3 Salonga]: That is the signature of PO3 Miguel Cordero, sir.

Q: How did you know that this is the signature of PO3 Cordero?

A: Because I was present when he signed it, sir.

Q: There is also a signature of Rey Argana of Police Files Tonite, whose signature is this?

A: That is the signature of Rey Argana from Police Files Tonite, sir.

x x x x

**Q: It appears, Mr. Witness, that there is no signature from the representative of the Department of Justice and elected barangay official where the accused was arrested, why?**

**A: Our team leader tried to get a representative from the barangay official and other representative, but according to our team leader, they failed to appear in our invitation to be our witness.**

x x x x<sup>[41]</sup> (Emphasis and underscoring supplied)

As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, PO3 Salonga tried to justify their deviation from procedure by offering the perfunctory excuse that their team leader tried to invite the required witnesses but to no avail, without really expounding on the same. Neither did the prosecution press on PO3 Salonga to determine how such earnest efforts were exerted, or even attempt to call the buy-bust team leader to the witness stand to determine whether or not earnest efforts were really done in order to ensure the required witnesses' presence during the inventory.

Moreover, the Court notes that PO3 Cordero was not presented as a witness during trial. In *People v. Bartolini*<sup>[42]</sup> (*Bartolini*), the Court explained that while the non-presentation of the poseur-buyer is, *per se*, not necessarily fatal to the cause of the prosecution, there must be at least someone else who is competent to testify as to the fact that the sale transaction indeed occurred between the poseur-buyer and the accused. Otherwise, the testimonies of the other witnesses regarding the matter become hearsay, and thus, inadmissible in evidence, to wit:

Aside from the points raised by Bartolini on the chain of custody and *corpus delicti*, we find that the first element of the crime involving the sale of illegal drugs – that the transaction or sale took place – was also not sufficiently proven by the prosecution. The non-presentation of the poseur-buyer was fatal to the prosecution as nobody could competently testify on the fact of sale between Bartolini and the poseur-buyer. In this