SECOND DIVISION

[G.R. No. 232940, January 14, 2019]

DENNIS LOAYON Y LUIS, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 6, 2017 and the Resolution[3] dated July 13, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 37683, which affirmed the Decision[4] dated June 16, 2015 of the Regional Trial Court of Quezon City, Branch 227 (RTC) in Criminal Case No. Q-10-163024, finding petitioner Dennis Loayon *y* Luis (Loayon) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC accusing Loayon of the crime of Illegal Possession of Dangerous Drugs. The prosecution alleged that at around 5 o'clock in the afternoon of February 24, 2010, a buy-bust team composed of police officers from the Quezon City Police District Station 9 (QCPD Station 9) went to Barangay Pansol to conduct a buy-bust operation against a certain "Awang." However, before the sale transaction between Awang and the poseur-buyer took place, Awang's companion, later identified as Loayon, shouted *"Pulis yan!"* after recognizing the poseur-buyer as a policeman, which prompted Awang and Loayon to run away in different directions. While Awang was able to elude the buy-bust team, one of the policemen, Police Officer 2 Raymund De Vera (PO2 De Vera), was able to corner Loayon, resulting in the latter's arrest. He likewise recovered the plastic sachet containing white crystalline substance thrown away by Loayon during the chase. Thereafter, the buy-bust team, together with Loayon, went to QCPD Station 9 where, *inter alia,* the seized item was marked, photographed, and inventoried in the presence of Barangay Kagawad Rommel Asuncion (Brgy. Kagawad Asuncion). The seized plastic sachet was then brought to the crime laboratory where, after examination,[7] the contents thereof yielded positive for 0.03 gram of methamphetamine hydrochloride, or *shabu,* a dangerous drug.[8]

In defense, Loayon denied the charges against him, claiming instead, that he just got out of his house to look for his wife when he saw policemen chasing some people. Suddenly, one of the policemen apprehended him and remarked, *"Pong ka na, Awang!"* He was then taken to QCPD Station 9, where he was detained until the instant criminal charge was filed against him.[9]

In a Decision[10] dated June 16, 2015, the RTC found Loayon guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine in the amount of P300,000.00.[11] The RTC found that the prosecution had established all the elements of the crime charged, noting that the policemen had no ill motive to inculpate Loayon and build a trumped-up charge against him. It also found that the policemen substantially complied with the chain of custody rule, thereby preserving the integrity and evidentiary value of the item seized from Loayon.[12] Aggrieved, Loayon appealed to the CA.

In a Decision[13] dated March 6, 2017, the CA affirmed the RTC ruling. It held that the policemen's positive identification of Loayon as the possessor of the seized plastic sachet, which he threw away while he was being chased, shall prevail over the latter's bare denials, which was uncorroborated by other evidence. Moreover, it observed that the prosecution was able to prove the crucial links in the chain of custody of the seized item.[14]

Undaunted, Loayon moved for reconsideration,[15] but the same was denied in a Resolution[16] dated July 13, 2017; hence, this petition.[17]

The Court's Ruling

The petition is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[18] 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.[19] 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.[20]

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.[21] 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.[22] In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[23] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[24]

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, "a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official";[25] or *(b)* if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service ***or*** the media."[26] 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."[27]

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."[28] 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."[29]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[30] 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.[31] The foregoing is based on the saving clause found in Section 21 (a),[32] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[33] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[34] 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.[35]

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.[36] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[37] 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.[38]

Notably, the Court, in *People v. Miranda,*[39] 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.[40]

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by representatives from the DOJ and the media. This may be easily gleaned from the Inventory of Seized Properties/Items[41] dated February 24, 2010, which only confirms the presence of an elected public official, *i.e.,* Brgy. Kagawad Asuncion. Such finding is confirmed by the testimony of the poseur-buyer, PO2 De Vera on direct and cross-examination, to wit:

Direct Examination

> [Fiscal Bacolor]: In connection with this case, [M]r. [W]itness, did you conduct [a] Physical Inventory of that item recovered from the accused?
> [PO2 De Vera]: Yes, sir.
>
> Q: Who personally conducted] the inventory?
> A: Our [i]nvestigator, Barangay Kagawad, and in my presence.
>
> Q: Who prepared the Inventory Receipt?
> A: PO3 Crisologo Laggui.
>
> Q: You said you were present during the conduct and the preparation of the [i]nventory, I'm showing to you a document entitled Inventory of Seized Property marked as Exhibit "F", will you please examine that document, and tell us if the same has any relation with that [i]nventory prepared by PO3 Crisologo Laggui?
> A: Yes sir, this is the same inventory.
>
> Q: You said Brgy. Kagawad was present during the inventory?
> A: Yes, sir.
>
> Q: Do you have proof?
> A: Yes, sir.
>
> Q: Where is that?
> A: He signed the inventory, sir.
>
> Q: Will you please examine again the [i]nventory, and point to us the said witness, Brgy. Kagawad[?]
> A: Yes sir, this is the signature of Brgy. Kagawad, Rommel Asuncion.[42]

Cross-Examination

> [Atty. Mallabo]: Likewise, in preserving the integrity of the evidence that you confiscated, you are required by law[,] particularly Sec. 21, R.A. 9165, to prepare an inventory. [I]n this case, did you prepare an