

## SECOND DIVISION

[ G.R. No. 238117, February 04, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDWIN  
ALCONDE Y MADLA AND JULIUS QUERQUELA\* Y REBACA,  
ACCUSED-APPELLANTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

This is an ordinary appeal<sup>[1]</sup> filed by accused-appellants Edwin Alconde y Madla (Alconde) and Julius Querquelay Rebaca (Querquela; collectively, accused-appellants) assailing the Decision<sup>[2]</sup> dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01578-MIN, which affirmed the Decision<sup>[3]</sup> dated November 10, 2016 of the Regional Trial Court of Misamis Oriental, Cagayan de Oro City, Branch 23 (RTC) in Crim. Case Nos. CR-DRG-2015-414 and CR-DRG-2015-415, finding: (a) Alconde guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs under Section 11, Article II of Republic Act No. (RA) 9165,<sup>[4]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002;" and (b) accused-appellants guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs under Section 5, Article II of the same Act.

### The Facts

This case stemmed from two (2) separate Informations<sup>[5]</sup> filed before the RTC, respectively charging Alconde of Illegal Possession of Dangerous Drugs and accused-appellants of Illegal Sale of Dangerous Drugs. The prosecution alleged that on August 9, 2015, the members of the Puerto Police Station 6 arrested a certain Angkie<sup>[6]</sup> for violation of RA 9165 and held him for further questioning. In the course thereof, Angkie revealed that Alconde was his source of *shabu*, prompting Police Officer 3 Armando Occeña Agravante (PO3 Agravante) to arrange a meet-up with the latter in Purok 7, Balubal, Cagayan de Oro City. Accordingly, a buy-bust operation was conducted, and the team proceeded to the said area.<sup>[7]</sup> When accused-appellants arrived, PO3 Agravante immediately handed over the P1,000.00 worth of marked money to Querquela; in exchange, Alconde gave the two (2) sachets containing a total of 0.1903 gram of *shabu* to PO3 Agravante.<sup>[8]</sup> Shortly thereafter, PO3 Agravante executed the pre-arranged signal, prompting Senior Police Officer 1 Rey Abecia to rush towards the scene and restrain Alconde. Meanwhile, PO3 Agravante frisked Querquela and recovered from him the marked money. He likewise performed a body search on Alconde, from whom he recovered one (1) sachet containing 1.2347 grams of marijuana fruit tops.<sup>[9]</sup> Subsequently, the seized items were photographed only in the presence of accused-appellants.<sup>[10]</sup> Not long after, accused-appellants were brought to the police station where the requisite

marking and inventory were conducted by PO3 Agravante in the presence of accused-appellants and Barangay Captain Vivian Malingin (Brgy. Capt. Malingin).<sup>[11]</sup> The seized items were then delivered to the PNP Crime Laboratory in Puerto, Cagayan de Oro City wherein upon examination, tested positive for the presence of methamphetamine hydrochloride or *shabu* and marijuana, both dangerous drugs.<sup>[12]</sup>

In his defense, Querquela denied the allegations against him, claiming that at around 9:00 o'clock in the evening of August 9, 2015, three (3) unidentified persons suddenly flagged him down and accosted him while he was on his way to the *habal-habal* terminal. Subsequently, the said men, who later on identified themselves as police officers, instructed him to bring them to his hut where Alconde was being interrogated. Afterwards, accused-appellants were brought to the Puerto Police Station.<sup>[13]</sup>

For his part, Alconde averred that at the time of the incident, he was simply sleeping in the hut of Querquela when an unknown person kicked the door open, pointed a gun at him, tied his hands with a rope, and brought him outside the hut. Thereafter, accused-appellants were brought to the police station, where Alconde was directed to hold one (1) small sachet of marijuana while a police officer took pictures of the same.<sup>[14]</sup>

In a Decision<sup>[15]</sup> dated November 10, 2016, the RTC found accused-appellants guilty beyond reasonable doubt of the crimes charged: (a) in Crim. Case No. CR-DRG-2015-414 for the crime of Illegal Possession of Dangerous Drugs, Alconde was sentenced to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum, and ordered to pay a fine of P300,000.00; and (b) in Crim. Case No. CR-DRG-2015-415 for the crime of Illegal Sale of Dangerous Drugs, accused-appellants were sentenced to suffer the penalty of life imprisonment and ordered to pay the amount of P500,000.00 each as fine.<sup>[16]</sup> The RTC found the elements of the crimes of Illegal Possession and Illegal Sale of Dangerous Drugs to be present, as the same were duly proved in light of the positive testimonies of the prosecution witnesses.<sup>[17]</sup> On the other hand, it rejected accused-appellants' defense of denial, for it failed to prevail over the positive testimonies of the prosecution witnesses.<sup>[18]</sup> Aggrieved, accused-appellants appealed<sup>[19]</sup> to the CA.

In a Decision<sup>[20]</sup> dated November 29, 2017, the CA affirmed *in toto* the RTC's ruling that accused-appellants are guilty of the crimes charged.<sup>[21]</sup> It ruled that the prosecution competently established all the elements of the crimes of Illegal Possession and Illegal Sale of Dangerous Drugs. It likewise held that the chain of custody over the seized dangerous drugs was substantially complied with, as it was shown that the integrity and evidentiary value of the seized drugs had been preserved.<sup>[22]</sup> Meanwhile, it found that the inconsistencies in the testimonies of the police officers did not actually detract from the truth and were thus too trivial to affect what was already proven by the prosecution, *i.e.*, the fact that accused-appellants acted in concert in selling *shabu* to PO3 Agravante.<sup>[23]</sup>

Hence, this appeal.

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellants' conviction for the crimes charged.

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

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,<sup>[24]</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>[25]</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>[26]</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>[27]</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, although jurisprudence recognized that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."<sup>[28]</sup>

Pertinent to this case, **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>[29]</sup> a representative from the media AND the Department of Justice, and any elected public official;<sup>[30]</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>[31]</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>[32]</sup>

In this case, the inventory and photography of the seized items were not conducted in the presence of the required witnesses, namely: an elected public official and a representative of the National Prosecution Service or the media. As the records show, the taking of photographs was immediately done upon the arrest but only in the presence of accused-appellants. It was only later when the police officers proceeded to the police precinct that a singular witness, Brgy. Capt. Malingin (an elected public official), was called to attend the marking and inventory of the confiscated items. Evidently, this procedure veers away from what is prescribed by law.