SECOND DIVISION

[G.R. No. 241261, July 29, 2019]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALBERT PEREZ FLORES, ACCUSED-APPELLANT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal[1] is the Decision[2] dated March 23, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02404, which affirmed the Decision[3] dated August 25, 2016 of the Regional Trial Court of Oslob, Cebu, Branch 62 (RTC) in Crirn. Case Nos. OS-15-1031 and OS-15-1032, finding accused-appellant Albert Perez Flores (Flores) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging Flores of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The prosecution alleged that on the evening of March 7, 2015, police officers from the Ginatilan Police Station, Cebu, successfully implemented a buy-bust operation against Flores, during which two (2) sachets weighing a total of 0.12 gram of white crystalline substance were recovered from him. As there were many people gathered due to a motocross contest at the area where the buy-bust operation was conducted, the police officers took Flores and the seized items to the police station where he was body searched in the presence of two (2) barangay councilors, during which eight (8) more sachets weighing a total of 0.43 gram were recovered from him. The markings, inventory,[6] and photography of the seized items were then conducted in the presence of Flores, as well as the aforesaid barangay councilors. Thereafter, the seized items were brought to the crime laboratory where, upon examination,[7] the contents thereof yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[8]

In defense, Flores denied the charges against him, claiming instead, that he went to Ginatilan, Cebu to work as a make-up artist for a beauty pageant event at the town fiesta. As he was waiting for his brother to fetch him at a gas station, a man in civilian clothes who was on board a motorcycle suddenly approached him and told him not to move. A few moments later, a patrol car arrived and he was dragged inside; afterwhich, he was taken to the municipal hall where his bag was searched, but no contraband was found therein.[9]

In a Decision[10] dated August 25, 2016, the RTC found Flores guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows:

(*a*) in Crim. Case No. OS-15-1031, to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00; and (*b*) in Crim. Case No. OS-15-1032, to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to twelve (12) years and one (1) month, as maximum, and to pay a fine in the amount of P300,000.00.[11] The RTC ruled that through the positive testimonies of members of the buy-bust team, the prosecution had established that Flores indeed sold two (2) plastic sachets containing *shabu* to the poseur-buyer, and after his arrest, eight (8) more plastic sachets also containing *shabu* were found in his possession. It further observed that the buy-bust team substantially complied with the chain of custody rule, thereby preserving the integrity and evidentiary value of the drugs seized from Flores.[12] Aggrieved, Reyes appealed to the CA.

In a Decision[13] dated March 23, 2018, the CA affirmed the RTC ruling. It held that the prosecution had established all the elements of the crimes charged, and that there was sufficient compliance with the chain of custody rule.[14]

Hence, this appeal seeking that Flores's conviction 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,[15] 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.[16] 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.[17]

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.[18] 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. 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."[19] 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.[20]

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,[21] a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official;[22] 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.[23] 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."[24]

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.[25] 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.'"[26]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[27] 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.[28] The foregoing is based on the saving clause found in Section 21 (a),[29] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[30] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[31] 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.[32]

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.[33] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[34] 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.[35]

Notably, the Court, in *People v. Miranda*,[36] 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, then 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."[37]

In this case, the Court finds that the police officers were justified in conducting the markings, inventory, and photography of the seized items at the police station instead of the place of arrest, considering that there were a lot of people at the latter area in view of the ongoing town fiesta activities in Ginatilan, Cebu. Nonetheless, it appears that the inventory and photography of the seized items were not conducted in the presence of representatives either from the DOJ or the media, contrary to the express mandate of RA 9165, as amended by RA 10640. This fact may not only be gleaned from the Certificate of Inventory[38] which was only signed by two (2) elected public officials, but also from the testimony of the poseur-buyer himself, Police Officer 2 Ruben Catubig (PO2 Catubig), pertinent portions of which are as follows:

> [Fiscal Tessa Mae R. Tapangan]: Earlier you said that you were the one who conducted the inventory and made the markings from the recovered pieces of evidence, if you could still remember, Mr. Witness, what were the markings you put on those evidence?
> [PO2 Catubig]: I put the markings APF the initial of the accused x x x.
>
> Q: During the inventory, Mr. Witness, who were present?
> A: Barangay Councilors of barangay San Roque.
>
> Q: Who else?
> A: Myself.
>
> Q: Anyone from the media and DOJ, Mr. Witness?
> A: None, ma'am.
>
> Q: Why none?
> A: Very hard to contact them.
>
> x x x x
>
> Q: Why hard?
> A: Nobody answered our call.
>
> Q: Now, you are speaking of DOJ, what office did you call?
> A: Our Chief of Police tried to contact his friend who is from MEDIA but due to the distance he could not come.[39]

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, PO2 Catubig acknowledged the absence of representatives from both the DOJ and the media, and offered the excuse that it was hard to contact the DOJ representatives and further, that their Chief of Police tried to contact a media representative, but the latter could not come. However, case law states that similar to sheer statements of unavailability, the explanation of PO2 Catubig that it was "hard to contact" the DOJ representatives, without more, is undoubtedly too flimsy of an excuse and hence, could not pass the aforediscussed standard to trigger the operation of the saving clause. Meanwhile, as regards the media representative, the prosecution should have called the Chief of Police to personally attest to the truth of the proffered excuse. Accordingly, since it was not