

THIRD DIVISION

[G.R. No. 233466, August 07, 2019]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARK ANDREW PAZ Y ROCAFORD, ACCUSED-APPELLANT.

DECISION

PERALTA, J.:

Before this Court is an appeal from the March 21, 2017 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08042 which affirmed the January 22, 2016 Decision^[2] of the Regional Trial Court (RTC) of Caloocan City, Branch 127, finding accused-appellant Mark Andrew Paz y Rocaford (*Paz*) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The facts are as follows:

Paz was indicted for violation of Section 5, Article II of R.A. No. 9165 in an Information dated May 10, 2013. The accusatory portion reads:

That on or about the 9th day of May, 2013 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there wilfully, unlawfully and feloniously sell and deliver to IO1 REAGAN B. SILVERIO, who posed as buyer, Two (2) heat-sealed transparent plastic sachets each later marked as RBS-1 05/09/13 and RBS-2 05/09/13 containing METHAMPHETAMINE HYDROCHLORIDE (*Shabu*) weighing 4.1001 grams & 3.2714 grams, which when subjected for laboratory examination gave POSITIVE result to the tests for Methamphetamine Hydrochloride, a dangerous drug, and knowing the same to be such.^[3]

When arraigned, Paz pleaded not guilty to the charge. After termination of the pre-trial, trial on the merits ensued.

The evidence for the prosecution established that at 10:00 a.m. on May 8, 2013, Intelligence Officer (IO) 2 Leverette Lopez of the Philippine Drug Enforcement Agency (PDEA) received information from the confidential informant (CI) about the illicit drug activities of a certain "*Bakla*," later identified as Paz, in Tala, Caloocan City. On the same day, IO2 Lopez formed a team for a buy-bust operation with IO1 Reagan Silverio as poseur-buyer and IO1 Al Vincent Ma Delgado as back-up arresting officer, and other operatives as perimeter security.^[4]

It was decided in the briefing that IO1 Silverio would buy ten (10) grams of *shabu*, worth P40,000.00, from Paz in front of the gate of Tala Leprosarium Hospital, Caloocan City. The buy-bust money was composed of one Five Hundred Peso bill and

five One Hundred Peso bills, which were marked "RBS," and boodle money for the rest of the amount. After dinner, the team divided into two groups, and boarded the maroon Toyota Revo service vehicle and a private vehicle. They fetched the CI at a fast-food chain in Quezon City before proceeding to the target area. They had a final briefing at a distance from the hospital. Thereafter, IO1 Silverio and the CI proceeded outside the gate, while the rest alighted and positioned themselves strategically.^[5]

After about an hour, Paz, clad in pink shirt, black blazer, and jeans, arrived. The CI instructed Paz through a text message to board the maroon Toyota Revo. After Paz boarded at the back seat, IO1 Silverio asked "*Tol, dala mo yong basura?*" to which Paz replied, "*Ipakita mo muna pera[.]*" He relented at IO1 Silverio's insistence, and handed a brown envelope sealed with an electrical tape. IO1 Silverio tore the tape and saw two plastic sachets, containing white crystalline substance, inside the envelope. Upon examination, IO1 Silverio surmised that there was a high probability that it was *shabu* since it was brittle. He placed the sachets inside his clutch bag and tendered the payment. While Paz was counting the money, IO1 Silverio executed the pre-arranged signal by turning the hazard light on. He then introduced himself as a PDEA agent.^[6]

IO1 Delgado and the team darted towards the vehicle upon seeing the blinking hazard light. He boarded at the rear, sat beside Paz, introduced himself, and informed the latter of his rights. He recovered from Paz the buy-bust money and a cellphone, and gave the same to IO1 Silverio. IO2 Lopez ordered the team to return to their office as a crowd was starting to gather. Thereafter, IO1 Silverio conducted an inventory of the seized items and took photographs thereof. *Barangay Kagawad* Jose Y. Ruiz, Jr. of *Barangay* Pinyahan, District IV, Quezon City witnessed the inventory and was among those who signed the same.^[7]

IO2 Lopez prepared the requests for examination, while IO1 Silverio delivered the requests and the seized items to the PDEA Crime Laboratory. Forensic Chemist Ariane Arcos received the items and the requests. She tested the specimens which later yielded positive for the presence of methamphetamine hydrochloride as per Chemistry Report No. PDEA-DD013-112.^[8]

In defense, Paz claimed that he was framed-up. Around 10:00 p.m. on May 8, 2013, he was walking near the Tala Leprosarium Hospital when three men accosted and forced him into a vehicle. They threatened him, "*Ilabas mo na para di ka masaktan*" to which he denied producing anything. They brought him to the Quezon City Memorial Circle where they asked him for money. Then, they directed him to call anyone who could help him produce the money. He was brought to *Barangay* Pinyahan, Quezon City, and later to the PDEA office. In the office, two plastic sachets of white crystalline substance on a plate and a bundle of money, which were both allegedly seized from him, were shown to him.^[9]

In a Decision dated January 22, 2016, the RTC found Paz guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs. The *fallo* of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered declaring accused Mark Andrew Paz y Rocaford in Criminal Case [No.

89942] for violation of Sec. 5. Art. II[,] R.A. 9165 guilty beyond reasonable doubt and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand ([P]500,000.00) Pesos.

The drug subject of this instant case is hereby ordered forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.^[10]

The trial court held that the prosecution duly proved and established the elements of illegal sale of dangerous drugs. IO1 Silverio, the poseur-buyer, disclosed that Paz was caught *in flagrante delicto* selling P40,000.00 worth of *shabu*. Paz received the marked money along with the boodle money from IO1 Silverio after he offered the brown envelope containing two plastic sachets of suspected *shabu*. The RTC gave more credence to the positive and straightforward testimony of IO1 Silverio as against Paz's bare denial and defense of frame-up. Paz never presented any witness to support his claim considering that there were passersby on the road at that time. As a hairdresser for three and a half years in the area where he also resides, he will be easily recognized, thus, it would have been easy for him to seek assistance from anyone to inform any of his relatives or friends about his alleged ordeal.^[11] The inconsistencies in IO1 Delgado's affidavit and testimony as to the date of the commission of the offense, and that of IO1 Silverio's affidavit and testimony on whether the team leader and the CI made the negotiation with Paz are inconsequential for they had nothing to do with the elements of illegal sale of dangerous drugs. The minor inconsistencies in the narration of the witness do not detract from its essential credibility as long as it is, on the whole, coherent and intrinsically believable.^[12]

On appeal, the CA affirmed the decision of the RTC. It pointed out that there were indeed obvious flaws in the compliance with the procedures laid down in Section 21 of R.A. No. 9165, considering that the seized items were marked and inventoried at the PDEA office and no representative from the media and the Department of Justice (DOJ) was present. However, it ruled that the lapses are not fatal and will not render the seized items inadmissible as evidence.^[13] The prosecution has proven the integrity and evidentiary value of the illegal drugs. IO1 Silverio did not part with the plastic sachets from the place of arrest until they reached the PDEA office. He marked the seized items with RBS-1 05/09/13 and RBS-2 05/09/13, prepared the inventory, and photographed the same in the presence of *Barangay Kagawad* Ruiz. IO1 Silverio personally delivered the items to the PDEA Crime Laboratory.^[14] The non-presentation of the evidence custodian does not diminish the integrity and evidentiary value of the seized items. When the defense agreed to dispense with the testimony of the forensic chemist, it effectively waived the opportunity to question her on the matter. Lapses in the safekeeping of seized illegal drugs that affected their integrity and evidentiary value should be raised at the trial court level. The totality of the testimonial and documentary evidence presented adequately established not only the elements of illegal sale of drugs, but also accounted for the unbroken chain of custody. The decretal portion of the decision reads:

WHEREFORE, the instant appeal is hereby **DENIED**. The January 22, 2016 Decision of the Regional Trial Court, Branch 127, Caloocan City in

Crim. Case No. C-89942 is **AFFIRMED**.

SO ORDERED.^[15] (Emphases in the original.)

In a Resolution^[16] dated November 6, 2017, this Court required the parties to submit their respective supplemental briefs, if they so desire. In his Manifestation in Lieu of a Supplemental Brief^[17] dated January 24, 2018, Paz opted not to file a supplemental brief since no new issue material to the case was discovered. Also, the Office of the Solicitor General, in its Manifestation and Motion in lieu of Supplemental Brief^[18] dated January 29, 2018, informed the Court that it elects to dispense with the filing of a supplemental brief considering that the facts, issues, and arguments in the case have been succinctly amplified in its Brief for the Appellee dated December 9, 2016.

Paz prays for his acquittal. Essentially, he argues that the prosecution failed to establish the unbroken chain of custody of the seized sachets of *shabu* from the moment of their seizure until their presentation before the court. The marking, inventory and photographing of the confiscated items were not executed at the place of seizure in Caloocan City, but at the PDEA office in Quezon City. IO1 Silverio never mentioned if he marked the items in the presence of Paz. Lastly, the inventory was not done in the presence of a representative from the DOJ and the media.

The appeal has merit.

It is settled that an appeal in a criminal case throws the whole records of the case open for review and it is the duty of the appellate court to correct, cite and appreciate errors that may be found in the appealed judgment whether they are assigned or unassigned.^[19] Given the unique nature of an appeal in a criminal case, an examination of the entire records of the case may be explored for the purpose of arriving at a correct conclusion as the law and justice dictate.

Jurisprudence holds that the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, especially when affirmed by the CA. However, the same rule admits of exceptions such as where facts of weight and substance, with direct and material bearing on the final outcome of the case, have been overlooked, misapprehended or misapplied.^[20] After due consideration of the records of the case and the relevant law and jurisprudence, the Court finds that this case falls under the exception.

Paz was charged with the crime of Illegal Sale of *shabu*. In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.^[21]

The identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.^[22]

Section 21 of R.A. No. 9165, as amended by R.A. No. 10640,^[23] provides for the procedural safeguards in the handling of seized drugs by the apprehending officer/team, to wit:

SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* - The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media 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, finally*, That noncompliance of 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 and custody over said items.

From the foregoing, Section 21 now only requires **two (2) witnesses** to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; **and** (b) either a representative from the DOJ **or** the media.

However, under the original provision of Section 21 and its IRR, which is applicable at the time Paz committed the offense charged, the apprehending team was required to immediately conduct a physical inventory and photograph the drugs after their seizure and confiscation in the presence of no less than **three (3) witnesses**, namely: (a) a representative from the **media and** (b) the **DOJ, and** (c) any **elected public official** who shall be required to sign copies of the inventory and be given a copy thereof.

Since compliance with the procedure in Section 21 is determinative of the integrity and evidentiary value of the *corpus delicti* and, ultimately, the fate of the liberty of the accused, the appellate court, including this Court, is not precluded from fully examining the records of the case if only to ascertain whether the procedure had been completely complied with, and if not, whether justifiable reasons exist to