

SECOND DIVISION

[G.R. No. 234273, September 18, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EMALYN N. MORENO, ACCUSED-APPELLANT.**

DECISION

CAGUIOA, J:

Before this Court is an ordinary appeal^[1] filed by the accused-appellant Emalyn N. Moreno (Moreno) assailing the Decision^[2] dated March 9, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07977, which affirmed the Decision^[3] dated September 29, 2015 of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 39 (RTC) in Criminal Case No. CR-12-10,539, finding Moreno guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"^[4] as amended.

The Facts

An Information was filed against Moreno in this case, the accusatory portion of which reads as follows:

That on or about the 12th day of July 2012, at around 12:00 midnight, more or less, [in] Barangay Salong, City of Calapan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any legal authority nor corresponding license or prescription, did then and there willfully, unlawfully and feloniously sell, deliver, or distribute to a poseur-buyer, one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride (shabu), a dangerous drug weighing of 0.016 (zero point zero one six) gram, more or less.

CONTRARY TO LAW.^[5]

Upon arraignment, Moreno pleaded not guilty. Thereafter, pre-trial and trial on the merits ensued.

The prosecution's version, as summarized by the CA, is as follows:

The prosecution's evidence shows that on 11 July 2012, at around 9:00 p.m., Marleo B. Sumale (Agent Sumale), an agent of the Philippine Drug Enforcement Agency (PDEA), was informed by a fellow PDEA agent that a certain person named "Ara," a waitress at the WRJ Resto Bar in Barangay Salong, Calapan City, Oriental Mindoro, was peddling dangerous drugs in said establishment. Acting on this information, Agent Sumale -along with other PDEA agents - formed a team to conduct a buy-bust operation

against subject Ara. Agent Sumale was designated as the poseur-buyer, while Rosemarie Catain (Agent Catain), was assigned to be the arresting officer. Before the operation, Agent Sumale marked the money to be used with "SMB."

In accordance with the plan, Agent Sumale and the informant proceeded to the establishment. At around 12:00 midnight, a woman approached them. The informant identified the woman as the same "Ara" who was the alleged drug-seller. After having been introduced to Agent Sumale, accused-appellant handed to him a plastic sachet containing suspected *shabu*. Upon receipt of the sachet, Agent Sumale handed to accused-appellant the marked P500.00 bill. Thereafter, Agent Sumale removed his baseball cap, signifying the completion of the transaction, upon which the other agents, originally positioned in strategic spots around the area, converged on the scene and effected the arrest of accused-appellant. Agent Catain frisked accused-appellant and found the marked bill. Agent Sumale then placed the marking "SMB 12/07/12" on the sachet containing suspected *shabu*. The apprehending team, along with the accused-appellant, then proceeded to the PDEA office where the inventory of the confiscated arms was done.

At around 3:10 a.m., Agent Sumale personally brought a letter-request from PDEA to the PNP Regional Crime Laboratory for the conduct of laboratory examination on the powdery white substance inside in the sachet sold by accused-appellant. Agent Sumale endorsed the sachet to PO1 Alex Redruco, who, in turn, turned it over to PSI Eugenio Garcia, a forensic chemist, for the conduct of chemical examinations.

In Chemistry Report No. D-065-12 dated 12 July 2012, PSI Garcia concluded that the white crystalline substance in the sachet was positive for methamphetamine hydrochloride, more commonly known as *shabu*.

[6]

On the other hand, the version of the defense, similarly summarized by the CA, is as follows:

For her part, accused-appellant interposed the defense of denial and frame-up. She alleged that at around 6:00 p.m. of 11 July 2012, she reported for work at the WRJ Resto Bar. Three (3) hours later, she returned home to check on her child. At around 11:00 p.m., while on board a tricycle returning to said establishment, a group of persons flagged down said tricycle and forced her to alight. The group then asked if she was "for hire" in her workplace, to which she answered in the negative. The group then forced accused-appellant into their vehicle and brought her to the PDEA office. After twenty (20) minutes of waiting in said vehicle, the group brought accused-appellant back to where she was taken. Upon arrival thereat, the group took pictures of her, after which accused-appellant was again forced into the vehicle. At around 3:00 a.m., accused-appellant was brought to the PDEA office and was placed in a detention cell. [7]

Ruling of the RTC

After trial on the merits, in its Decision dated September 29, 2015, the RTC convicted Moreno of the crime charged. The dispositive portion of the said Decision reads:

A C C O R D I N G L Y, in view of the foregoing, judgment is hereby rendered finding the accused EMALYN MORENO y NAPOLITANO **GUILTY** beyond reasonable doubt as principal of the crime charged in the aforequoted Information and in default of any modifying circumstances attendant, hereby sentences her to suffer the penalty of imprisonment of **LIFE IMPRISONMENT and to pay a fine of FIVE HUNDRED THOUSAND (P500,000.00) PESOS**, with the accessory penalties provided by law and with credit for preventive imprisonment undergone, if any.

The 0.016 gram of "*shabu*" subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with law.

SO ORDERED.^[8]

The RTC ruled that the prosecution proved all the essential elements of the crimes charged.^[9] It further held that "[a]lthough it may be true that the inventory of the confiscated item was conducted at the PDEA office in Calapan City, and not at the crime scene, the Court finds no sufficient reason to suspect that the "*shabu*" and buy-bust money recovered from the accused were unduly compromised. Besides, granting *arguendo* that the PDEA agents failed to strictly comply with Section 21(1), Article II of R.A. No. 9165, such omission is not fatal and does not automatically render the accused's arrest as illegal or the items seized/confiscated from her inadmissible."^[10] The RTC further held that Moreno's defense of denial and frame-up could not overcome the testimonies of the police officers as to the conduct of the buy-bust operation. The RTC therefore convicted Moreno of the crime.

Aggrieved, the Moreno appealed to the CA.

Ruling of the CA

In the questioned Decision dated March 9, 2017 the CA affirmed the RTC's conviction of Moreno, holding that the prosecution was able to prove the elements of the crimes charged, namely: (1) the identity of the buyer, as well as the seller, the object, and the consideration of the sale; (2) the delivery of the thing sold and the payment therefor.^[11] The CA gave credence to the testimonies of the prosecution witnesses over the accused-appellant's claim of denial and frame-up.

As regards compliance with Section 21, Article II of the Implementing Rules and Regulations (IRR) of RA 9165, the CA held that strict compliance with the said provision was the ideal, although substantial compliance with the same may suffice provided the integrity of the evidence is properly preserved.^[12] It then held that, in this case, there was substantial compliance with the requirements of Section 21. Thus, Moreno's guilt beyond reasonable doubt was sufficiently established.

Hence, the instant appeal.

Issue

For resolution of this Court is the issue of whether the RTC and the CA erred in convicting Moreno.

The Court's Ruling

The appeal is meritorious.

In cases involving dangerous drugs, the State bears not only the burden of proving the elements of the crime charged, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.^[13] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,^[14] the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation, to receipt in the forensic laboratory, to safekeeping, to presentation in court until destruction.^[15] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.^[16]

In this connection, Section 21, Article II of RA 9165,^[17] the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

This must be so because the possibility of abuse is great given the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals.^[18]

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom shall be

required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.^[19] In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat, as the CA itself pointed out, that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.^[20] The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.^[21]

In the present case, none of the three required witnesses was present at the time of seizure and apprehension, and only two of them were present during the conduct of the inventory. As Agent Marleo Sumale (Agent Sumale), the one who acted as poseur-buyer, himself testified:

Q Who handed to you this buy bust money?

A Agent Naulgan.

Q Who were to assist you in the conduct of the operation?

A Agent Naulgan assigned Agent Rosemarie and Agent Quitain.

Q What time did you jump off the operation?

A Twelve o' clock midnight of July 13, Ma'am.

Q Who was with you when you went to the place of the operation?

A I was with the confidential informant.

Q How about Agent Quitain who was with her?

A We both boarded the same vehicle.

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Q What happened next after you executed the pre-arranged signal?

A The tram rushed to the place where alyas Ara was standing.

Q When the arresting team was apprehending Ara where were you?