

## FIRST DIVISION

[ G.R. No. 242817, September 16, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
MICHAEL ROXAS Y CAMARILLO, ACCUSED-APPELLANT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this ordinary appeal<sup>[1]</sup> is the Decision<sup>[2]</sup> dated December 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08681, which affirmed the Judgment<sup>[3]</sup> dated September 20, 2016 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case No. R-QZN-13-05557-CR, finding accused-appellant Michael Roxas y Camarillo (Roxas) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,<sup>[4]</sup> otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

#### The Facts

This case stemmed from an Information<sup>[5]</sup> filed before the RTC accusing Roxas of the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that in the evening of November 30, 2013, the operatives of the District Anti-Illegal Drugs-Special Operations Task Group (DAID-SOTG) of Camp Karingal in Quezon City successfully implemented a buy-bust operation against a certain alias "*Sunog*" later identified as Roxas, during which one (1) plastic sachet containing suspected *shabu* was recovered from him. After marking the seized plastic sachet at the place of arrest, the arresting officers proceeded to the nearest barangay hall where the inventory<sup>[6]</sup> was conducted in the presence of Barangay Captain Raulito R. Datiles<sup>[7]</sup> and media representative Rey Argana. Thereafter, the buy-bust team proceeded to Camp Karingal for the photographing of Roxas, the marked money, and the suspected *shabu*, as well as the preparation of the necessary paperwork for examination. Subsequently, the seized item was taken to the crime laboratory where, after examination,<sup>[8]</sup> the contents thereof yielded positive for *methamphetamine hydrochloride*, a dangerous drug.<sup>[9]</sup>

In defense, Roxas denied the charges against him, claiming instead that in the afternoon of November 30, 2013, he was watching a basketball game with his stepson at the Bugallon Plaza in Quezon City, when four (4) police officers suddenly arrived and arrested him for no reason at all. On cross-examination, Roxas said he neither had any previous quarrel with the police officers, nor did the latter ask money from him. He also claimed that he did not tell the barangay captain about his alleged unlawful arrest as he was not given a chance to defend himself. Lastly, he admitted that he did not file any charges against the police officers for fear that they might do something bad to him and his family if he took action.<sup>[10]</sup>

In a Judgment<sup>[11]</sup> dated September 20, 2016, the RTC found Roxas guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment, and to pay a fine in the amount of P500,000.00.<sup>[12]</sup> The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that Roxas indeed sold a plastic sachet containing *methamphetamine hydrochloride*, a dangerous drug, for a consideration of ten thousand pesos (P10,000.00) to the poseur-buyer, resulting in his arrest. The RTC found that the failure of the police officers to immediately inventory and photograph the seized drug, and the absence of a Department of Justice (DOJ) personnel during the inventory-taking, did not render the subject drug inadmissible because the integrity and evidentiary value of the illegal drug were duly preserved.<sup>[13]</sup> On the other hand, the RTC found Roxas's defense of denial as inherently weak which cannot prevail over the positive testimony of the prosecution's witnesses.<sup>[14]</sup> Aggrieved, Roxas appealed<sup>[15]</sup> to the CA.

In a Decision<sup>[16]</sup> dated December 29, 2017, the CA affirmed the RTC ruling *in toto*.<sup>[17]</sup> It held that Roxas was caught in *flagrante delicto* of selling 2.34 grams of *methamphetamine hydrochloride* or *shabu* during the buy-bust operation.<sup>[18]</sup> Furthermore, the CA ruled that the integrity and evidentiary value of the item seized from Roxas were preserved.<sup>[19]</sup>

Hence, this appeal<sup>[20]</sup> seeking that Roxas'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,<sup>[21]</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>[22]</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>[23]</sup>

To establish the identity of the dangerous drugs 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>[24]</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. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."<sup>[25]</sup> 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.<sup>[26]</sup>

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>[27]</sup> a representative from the media AND the DOJ, and any elected public official;<sup>[28]</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<sup>[29]</sup> (NPS) OR the media.<sup>[30]</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>[31]</sup>

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.<sup>[32]</sup> 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.'"<sup>[33]</sup>

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.<sup>[34]</sup> 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.<sup>[35]</sup> The foregoing is based on the saving clause found in Section 21 (a),<sup>[36]</sup> Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.<sup>[37]</sup> It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,<sup>[38]</sup> and 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.<sup>[39]</sup>

Anent the witness requirement, noncompliance 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.<sup>[40]</sup> Thus, **mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.**<sup>[41]</sup>

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.<sup>[42]</sup>

Notably, the Court, in *People v. Miranda*,<sup>[43]</sup> 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, x x x 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."<sup>[44]</sup>

In this case, an examination of the Inventory of Seized/Confiscated Item/Property<sup>[45]</sup> would show that the inventory of the seized items was not done in the presence of a DOJ representative, as said inventory form only contains the signatures of an elected public official and a media representative.<sup>[46]</sup> This is confirmed by the respective testimonies of the members of the arresting team, namely Police Officer (PO) 3 Joselito Dela Cruz (PO3 Dela Cruz) and PO3 Joel Almazan (PO3 Almazan), pertinent portions of which read:

#### **TESTIMONY OF PO3 DELA CRUZ**

[ACP Alexis G. Bartolome]

Q: I am showing this Inventory of Seized/Confiscated Items/Property. What relation has this document with the one you mentioned?

[PO3 Dela Cruz]

A: This is the same document we prepared, sir.

x x x x

Q: And there is also a signature of [Raulito] Datiles, Barangay Captain of *Bagumbuhay*, whose signature is that?

A: That is the signature of the Barangay Chairman, sir.

Q: And there is also a signature beside the name of Rey Argana, Police Files Tonite, whose signature is that?

A: That is the signature of the representative from the media, sir.

Q: How did you know that these are their respective signatures?

A: Because I was present when they affixed their signatures.

x x x x

Q: Mr. Witness, it appears that there is no representative from the [DOJ]. Why is it that there was no representative from the DOJ?

A: Because nobody came from the [DOJ], sir.<sup>[47]</sup>

#### **TESTIMONY OF PO3 ALMAZAN**

Q: And who were present during the Inventory, Mr. Witness?

[PO3 Almazan]

A: The barangay captain and the media personnel, sir.

Q: And there is a signature beside the name Raulito Datiles, whose signature is that?

A: That is the signature of the barangay chairman of Brgy. *Bagumbuhay*, sir.

Q: And there is also a signature beside the name Rey Argana Police Files Tonite, whose signature is this?

A: The media personnel, sir.

Q: And why is it there is no DOJ representative?

A: Because there was no available, sir.<sup>[48]</sup>