

SECOND DIVISION

[G.R. No. 243313, November 27, 2019]

**ROSANA HEDREYDA Y LIZARDA, PETITIONER, VS. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

DECISION

REYES, A., JR., J.:

Before the Court is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assailing the Decision^[2] dated January 23, 2018 and the Resolution^[3] dated November 13, 2018 of the Court of Appeals (CA) in CA-G.R. CR No. 39519, which affirmed the Judgment^[4] dated December 7, 2016 of the Regional Trial Court (RTC) of San Pedro City, Laguna, Branch 31, in Criminal Case No. 13-9460-SPL, finding Rosana Hedreyda y Lizarda (petitioner) guilty beyond reasonable doubt for violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

In an Information^[5] dated January 7, 2014, the petitioner was charged with Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of R.A. No. 9165. The accusatory portion of the Information reads:

That on or about January 3, 2014, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court[,], the said accused[,], without authority of the law, did then and there willfully, unlawfully and feloniously have in her possession, custody and control two (2) small heat-sealed transparent plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE, commonly known as shabu, a dangerous drug, weighing a total of zero point fifty[-]eight (0.58) gram.

CONTRARY TO LAW.^[6]

Version of the Prosecution

Police Officer 2 Mateo F. Cailo (PO2 Cailo), a member of the Philippine National Police assigned at the Provincial Intelligence Branch of the Laguna Provincial Police Office in Biñan City, Laguna, testified that at around 1:30 p.m. of January 3, 2014, he was on duty when he received a report from a concerned citizen that an illegal drug trade was rampantly and openly going on at Amil Compound in Barangay San Antonio, San Pedro, Laguna. After he relayed the information to Police Chief Inspector Arnold Formento, the latter directed him and PO2 Melmar B. Viray (PO2 Viray) to respond to the said report. PO2 Cailo and PO2 Viray then proceeded to the location and arrived at Amil Compound at around 4:30 p.m. According to PO2 Cailo,

while they were standing near a store conducting their surveillance, they saw the petitioner at a distance of two meters, examining and flicking with her fingers a transparent plastic sachet containing white powdery substance suspected to be *shabu*. This prompted them to approach the petitioner. After they introduced themselves as police officers and informed her that she was being arrested for illegal possession of dangerous drugs, they asked the petitioner to take out the contents of her pocket to which the latter obliged. They found in her possession another plastic sachet containing powdery substance. The seized sachets were marked by PO2 Cailo with "RLH" and "RLH-1," the initials of the petitioner. They then brought the petitioner to the police station where a physical inventory of the seized illegal drugs was conducted in the presence of the petitioner and a media representative who took photographs of the same. After the request for laboratory examination was prepared and the drug dependency test conducted, the seized illegal drugs were brought by PO2 Cailo and PO2 Viray to the crime laboratory for examination. PO2 Cailo handed over the seized drugs to the crime laboratory receiving clerk, P03 Randy Legaspi, who then gave it to Forensic Chemist Donna Villa Huelgas who found both specimens positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.^[7]

Version of the Defense

On January 3, 2014, at around noon, the petitioner was sleeping inside her house in Amil Compound when police officers arrived and entered her house looking for her husband. She told them that he was not around as he seldom comes home. Nonetheless, the police officers searched her house. PO2 Viray then said that he found *shabu* on the bed. The petitioner denied keeping any drugs in the house but the police officers did not listen to her and brought her to the police station for investigation.^[8]

On arraignment, the petitioner pleaded "not guilty" to the charge. Trial on the merits ensued thereafter.^[9]

In a Judgment^[10] dated December 7, 2016, the RTC found the petitioner guilty of the offense charged. The trial court held that the evidence presented by the prosecution has proven that the requirements of the law were substantially complied with and that the integrity and evidentiary value of the seized drugs were properly preserved.^[11] The decretal portion of the judgment reads as follows:

WHEREFORE, judgment is hereby rendered finding [the petitioner] GUILTY beyond reasonable doubt of violation of Section 11, Article II of [R.A.] No. 9165 and she is hereby sentenced to suffer imprisonment of TWELVE (12) YEARS and ONE (1) DAY as minimum and FOURTEEN (14) YEARS and EIGHT (8) MONTHS as maximum and to pay a fine of THREE HUNDRED THOUSAND (P300,000.00) PESOS without subsidiary imprisonment in case of insolvency.

Let the two plastic sachets of methamphetamine hydrochloride subject matter of this case be forwarded to the Philippine Drug Enforcement Agency for its disposition as provided by law.

SO ORDERED.^[12]

Undeterred, the petitioner appealed to the CA. In a Decision^[13] dated January 23, 2018, the CA affirmed the conviction and held, among others, that the failure of the police officers to strictly comply with Section 21, Article II of R.A. No. 9165 was not fatal as long as the integrity and evidentiary value of the seized dangerous drugs were preserved.^[14] The *fallo* of the decision reads:

WHEREFORE, the appeal is **DENIED**. The assailed disposition of the RTC in Crim. Case No. 13-9460-SPL is **AFFIRMED**. Costs against the [petitioner].

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

The petitioner moved for reconsideration^[16] which was, however, denied by the CA in a Resolution^[17] dated November 13, 2018. Hence, this petition.

The issue for the Court's resolution is whether or not the petitioner's conviction for illegal possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165, should be upheld.

Ruling of the Court

The petition is meritorious.

To warrant a conviction for violation of R.A. No. 9165, the prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link of the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.^[18]

Here, the petitioner was charged with the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11,^[19] Article II of R.A. No. 9165. The petitioner insists that she should be acquitted for failure of the prosecution to establish every link in the chain of custody of the seized dangerous drugs and its failure to comply with the procedure outlined in Section 21 of R.A. No. 9165.

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph 1 not only provides the manner by which the seized drugs must be handled, but likewise enumerates the persons who must be present during the inventory and taking of photographs, viz.:

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 drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof[.] (Emphasis and underscoring ours)

In 2014, R.A. No. 10640^[20] amended R.A. No. 9165, specifically Section 21 thereof, to further strengthen the anti-drug campaign of the government. Paragraph 1 of Section 21 was amended, in that the number of witnesses required during the inventory stage was reduced from three to only two, 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 person/s 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.^[21] (Emphasis and underscoring ours, and italics in the original)

A comparison of the cited provisions shows that the amendments introduced by R.A. No. 10640 reduced the number of witnesses required to be present during the inventory and taking of photographs from three to two - an elected public official AND a representative of the National Prosecution Service (DOJ) OR the media.

These witnesses must be present during the inventory stage and are, likewise, required to sign the copies of the inventory and be given a copy of the same, to ensure that the identity and integrity of the seized items are preserved and that the police officers complied with the required procedure. Failure of the arresting officers to justify the absence of any of the required witnesses, *i.e.*, the representative from the media or the DOJ and any elected official, shall constitute as a substantial gap in the chain of custody.

Since the offense subject of this petition was committed before the amendment introduced by R.A. No. 10640, the old provisions of Section 21(a) and its Implementing Rules and Regulations (IRR) should apply, *viz.*:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official 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, further*, that non-compliance with 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 of and custody over said items[.]

The use of the word "shall" means that compliance with the foregoing requirements is mandatory. Section 21(a) clearly states that physical inventory and the taking of photographs must be made in the presence of the accused or his/her representative or counsel and the following indispensable witnesses: **(1) an elected public official; (2) a representative from the DOJ; and (3) a representative from the media**. The Court, in *People v. Mendoza*,^[22] explained that the presence of these witnesses would preserve an unbroken chain of custody and prevent the possibility of tampering with or "planting" of evidence, *viz.*:

Without the insulating presence of the representative from the media or the [DOJ], or any elected public official during the seizure and marking of the [seized drugs], the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of [R.A.] No. 6425 (*Dangerous Drugs Act of 1972*) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the [said drugs] that were evidence herein of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.^[23] (Italics in the original)

As culled from the records and highlighted by the testimonies of the witnesses themselves, only one out of three of the required witnesses was present during the inventory stage. There was no elected public official and no representative from the DOJ. It, likewise, bears stressing that PO2 Cailo himself admitted on direct