

SECOND DIVISION

[G.R. No. 242025, November 20, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. NORIN SENDAD Y KUNDO A.K.A. "NHORAIN SENDAD Y KUSAIN,"[*]
ACCUSED-APPELLANT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal^[1] is the Decision^[2] dated June 21, 2018 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01626-MIN, which affirmed the Judgment^[3] dated April 28, 2016 of the Regional Trial Court of Tacurong City, Branch 20 (RTC) in Criminal Case Nos. 3637-T and 3638-T, finding accused-appellant Norin Sendad y Kundo a.k.a. "Nhorain Sendad y Kusain" (Sendad) 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) Criminal Complaints^[5] filed before the RTC accusing Sendad of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The prosecution alleged that at around 1:00 p.m. of January 11, 2013, the members of the San Narciso Police successfully implemented a buy-bust operation against Sendad, during which two (2) plastic sachets containing white crystalline substance were recovered from her. After Sendad's arrest, she was bodily searched, and four (4) more plastic sachets wrapped in paper containing a combined weight of 0.2613 gram of suspected *shabu* were recovered from her. PO3 Relyn Gonzales (PO3 Gonzales) then marked the six (6) plastic sachets he recovered, while PO1 Emmanuel Europa (PO1 Europa) marked the cellphone. They then brought Sendad and the seized items to the police station for further documentation and investigation. Thereat, they turned over Sendad and the seized items to the investigator and Senior Police Officer 1 John Bacea (SPO1 Bacea) who conducted the inventory and photography of the same in the presence of Sendad, Barangay Kagawad Randy L. Casama, and Leo Diaz, a media representative. Notably, there was no Department of Justice (DOJ) personnel present during such inventory and photography. Afterwards, the seized items were returned to PO3 Gonzales who kept the same on his person until the next day when he turned it over to the crime laboratory where, after examination,^[6] the contents thereof yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.^[7]

In defense, Sendad denied the charges against her, claiming instead, that she was inside Kimsan Plaza to buy some household supplies when suddenly, PO3 Gonzales put his arm on her shoulder, while two (2) other persons followed from the back. They told her not to resist or shout, and to just go with them. She did not know

these men. She was then brought to the Tacurong City Police Station where she was frisked. They took P3,500.00 from her as well as her cellphone and made her sign a document. She was then detained in the lock-up cell. She later found out that she was being arrested for selling *shabu*, which she denied. She further denied that there was any such commotion caused by her supposed arrest in Kimsan Plaza. This was corroborated by the testimony of Rosemarie Belandres (Belandres), the roving guard assigned to the grocery section of the Kimsan Plaza on the date of the incident, who testified that there was no commotion in that section of Kimsan Plaza on the said date. Furthermore, she had no knowledge of a police apprehension for drugs on the said date. Additionally, Anthony Gonio (Gonio), the head of security of Kimsan Plaza during the time of the incident, likewise confirmed that he did not receive any report of an apprehension on the said date, or of any marking or inventory of drugs that supposedly happened in the grocery section.^[8]

In a Judgment^[9] dated April 28, 2016, the RTC found Sendad guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced her as follows: (a) in Criminal Case No. 3637-T, she was sentenced to suffer the penalty of life imprisonment with no eligibility for parole, and to pay a fine in the amount of P500,000.00; and (b) in Criminal Case No. 3638-T, she was sentenced to suffer the penalty of imprisonment ranging from eight (8) years, as minimum, to fourteen (14) years, four (4) months, and one (1) day, as maximum, and to pay a fine in the amount of P300,000.00.^[10] The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that Sendad indeed sold two (2) plastic sachets containing dangerous drugs to the poseur-buyer, resulting in her arrest, and that she was later found to have been in illegal and knowing possession of four (4) more plastic sachets of dangerous drugs. Likewise, the RTC held that the identity, integrity, and evidentiary value of the illegal drugs were duly preserved. While the testimonies of PO3 Gonzales and PO1 Europa had contradictions, these refer to collateral matters which actually strengthened their credibility as it erased any suspicion of prior rehearsal. On the other hand, the RTC found Sendad's defense of denial untenable for her failure to substantiate the same, and in light of her positive identification by the prosecution's witnesses. The RTC also did not give credence to the statements of Belandres and Gonio, whose testimonies may be unreliable owing to the period of time which elapsed from the date of the incident and when they took the witness stand.^[11] Aggrieved, Sendad appealed^[12] to the CA.

In a Decision^[13] dated June 21, 2018, the CA affirmed the RTC ruling, with modification on the penalty of imprisonment imposed in Criminal Case No. 3638-T to twelve (12) years and one (1) day, as minimum, to twenty (20) years, as maximum.^[14] It held that the prosecution had sufficiently established beyond reasonable doubt all the elements of the crimes charged against Sendad, and all the links constituting the chain of custody. The CA also agreed with the RTC that the contradictions in the testimonies of PO3 Gonzales and PO1 Europa did not weaken their credibility.^[15]

Hence, this appeal seeking that Sendad'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,^[16] 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.^[17] 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.^[18]

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.^[19] 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."^[20] 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.^[21]

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,^[22] a representative from the media AND the Department of Justice (DOJ), and any elected public official;^[23] or (b) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service^[24] OR the media."^[25] 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."^[26]

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."^[27] 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."^[28]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.^[29] 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.^[30] The foregoing is based on the saving clause found in Section 21 (a),^[31] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.^[32] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,^[33] and that the justifiable ground for