

SECOND DIVISION

[G.R. No. 246362, November 11, 2019]

**MELANIE GREFALDO Y DE LEON, PETITIONER, VS. PEOPLE OF
THE PHILIPPINES, RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated June 28, 2018 and the Resolution^[3] dated March 28, 2019 of the Court of Appeals (CA) in CA-G.R. CR. No. 39394, which affirmed the Decision^[4] dated December 6, 2016 of the Regional Trial Court of Antipolo City, Branch 97 (RTC) in Criminal Case No. 12-44012 finding petitioner Melanie Grefaldo y De Leon (petitioner) guilty beyond reasonable doubt of violating Section 11 of Republic Act No. (RA) 9165,^[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information^[6] filed before the RTC accusing petitioner of the crime of Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165.

The prosecution alleged that at around 7:30 in the morning of March 22, 2012, Police Officer (PO) 1 Denver Riñon^[7] (PO1 Riñon) and PO2 Rhene Bogay (PO2 Bogay), members of the Antipolo City Police, went to La Colina Subdivision in Barangay Mambugan, Antipolo City to investigate reports of purported illegal gambling activities in the area.^[8] Thereat, they encountered petitioner, who was acting suspiciously as if she was accepting bets for *jueteng*. Upon approaching her, they saw two (2) plastic sachets containing white crystalline substance fall from her right pocket. Suspicious that the sachets contained illicit drugs, they introduced themselves as police officers to petitioner and arrested her.^[9] They then seized and marked the sachets and brought petitioner to the police station in San Jose, Antipolo City, where they photographed^[10] and inventoried^[11] the seized items and subsequently forwarded the same to the Rizal Provincial Crime Laboratory.^[12] After examination,^[13] their contents tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.^[14]

For her part, petitioner denied the charge against her and claimed that at around 5:00 o'clock in the afternoon of March 21, 2012, she was on board her motorcycle heading to her friend's house in La Colina Subdivision, when several male individuals abruptly surrounded her outside the subdivision. They forced her to board one of their motorcycles and brought her to the Antipolo City Police Station, where she was detained. It was only on March 23, 2012 during inquest proceedings that she learned of the drug-related charge against her.^[15]

In a Decision^[16] dated December 6, 2016, the RTC found petitioner **guilty** beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of imprisonment for a period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, eight (8) months, and one (1) day, as maximum, and to pay a fine in the amount of P300,000.00.^[17] The trial court gave credence to the testimonies of the prosecution witnesses and found that the elements of the alleged crime had been sufficiently proven. Meanwhile, it rejected petitioner's defenses of denial and frame-up, for failure to substantiate the same.^[18]

Aggrieved, petitioner appealed^[19] to the CA, arguing that the trial court erred in relying on the incredulous testimonies of the prosecution witnesses and in disregarding the failure of the police officers to comply with the witness requirement under Section 21, Article II of RA 9165.^[20]

In a Decision^[21] dated June 28, 2018, the CA **affirmed** the ruling of the RTC.^[22] It upheld the trial court's findings and found petitioner's defense untenable for lack of evidence. Anent the police officers' non-compliance with the witness requirement under RA 9165, it ruled that such was not fatal in view of the time constraints of the situation, and because the integrity and evidentiary value of the illegal drugs remained intact.^[23]

Undaunted, petitioner moved for reconsideration,^[24] which was denied in a Resolution^[25] dated March 28, 2019; hence, the instant petition.

The Court's Ruling

The petition is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,^[26] 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.^[27] 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.^[28]

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.^[29] 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."^[30] 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.^[31]

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,^[32] a representative from the media AND the Department of Justice (DOJ), and any elected public official;^[33] or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service^[34] OR the media.^[35] 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."^[36]

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."^[37] 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."^[38]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.^[39] 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.^[40] The foregoing is based on the saving clause found in Section 21 (a),^[41] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.^[42] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,^[43] and that 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.^[44]

Anent the witness requirement, non-compliance 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.^[45] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.^[46] 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.^[47]

Notably, the Court, in *People v. Miranda*,^[48] 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, 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."^[49]

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by any of the three (3) witnesses provided under Section 21, Article II of RA 9165. This may be easily gleaned from the Inventory Report^[50] of the seized items which only confirms the presence of PO1 Riñon and PO2 Bogay, which fact was also substantially admitted by the former on cross-examination.^[51] As earlier stated, it is incumbent upon the prosecution to account for the absence of the required witnesses by presenting a justifiable reason therefor or, at the very least, by showing that the apprehending officers exerted genuine and sufficient efforts to secure their presence. Markedly, the absence of an elected public official was left **unacknowledged**, much less justified.

Meanwhile, to justify the absence of the respective representatives from the DOJ and the media, PO1 Riñon and PO2 Bogay executed a sworn written explanation^[52] explaining that they failed to procure their presence due to "lack of material time," which was also reiterated in their individual testimonies on cross-examination, to wit:

Cross-Examination of PO1 Riñon

[Atty. Brend Virgilio S. Vergara]: And annexed to your inventory report is an explanation, can you enlighten us, what is this explanation all about?

[PO1 Riñon]: It would explain the reason why we were not able to get a DOJ representative and the media.

Q: So what is the reason why is it that a representative from the DOJ and the media is required in the preparation and conduct of the inventory of the seized items?

A: Requirements po kasi iyon, kailangan ng media at saka ng DOJ representative gawa ng apo nang hindi po naming nagawa ang requirements na iyon, gumawa naman kami ng explanation **due to lack of material time** na rin po.^[53]

Cross-Examination of PO2 Bogay

[Atty. Brend Virgilio S. Vergara]: Attached to the inventory report is an explanation, which the defense marked as Exhibit "2-A". Can you please explain to us why there is a need for an explanation in relation to the preparation of the inventory report?

[PO2 Bogay]: Nung time na iyon sir, **wala na po kaming oras na makahanap ng representative sa media at DOJ.**

(translation) At that time we had no time to look for a representative from the media and DOJ due to **lack of material time** sir.^[54]

The Court, however, finds such explanation untenable.

In *People v. Lim*,^[55] the Court explained that the absence of the required witnesses must be justified based on acceptable reasons such as: "(1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during

the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ [and] media representative[s] and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape."^[56] Likewise, it bears to stress that police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.^[57]

In the case at bar, it appears that the police officers **failed to exert genuine and sufficient efforts** to comply with the witness requirement. While the arresting officers discovered petitioner's possession of illegal drugs spontaneously and without prior anticipation, they failed to provide any plausible explanation as to why the constraints of time impaired their ability to secure the proper witnesses within the period allotted under Article 125 of the Revised Penal Code; thus, it cannot be ascertained whether their actions were reasonable under the given circumstances. In fact, contrary to their sworn written explanation, the respective testimonies of PO1 Riñon and PO2 Bogay on cross-examination show that they did not even bother to attempt to contact the proper witnesses and admittedly, had no knowledge of how to do so, to wit:

Cross-Examination of PO1 Riñon

[Atty. Brend Virgilio S. Vergara]: So, what is it that a representative from the DOJ should be present at that very moment when you conducted an inventory of the seized items?

[PO1 Riñon]: It was a requirement sir.

Q: Why is it a requirement?

A: It was a requirement under R.A. 9165, sir.

Q: So, what is that in the R.A. 9165 that requires DOJ representative to be present?

A: I don't know sir.

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Q: So Mr. Witness, you said that you were not able to get the presence of a DOJ representative and media for lack of material time. My question now, **why is it that you lack time in trying to contact these persons when the incident happened in the morning?**

A: **It's our investigator's tasked [sic] to coordinate or to call a media or a representative from the DOJ.**

Q: So, as the arresting officer or as the person who signed this explanation, can you state to this Honorable Court who is that personnel or officer from the Department of Justice whom you are to contact?

A: **I have no idea** sir, maybe a lawyer.