

## SECOND DIVISION

[ G.R. No. 233744, February 28, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. WILSON RAMOS Y CABANATAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is an ordinary appeal<sup>[1]</sup> filed by accused-appellant Wilson Ramos y Cabanatan (Ramos) assailing the Decision<sup>[2]</sup> dated March 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07864, which affirmed the Judgment<sup>[3]</sup> dated October 23, 2015 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case No. Q-10-167524 finding him 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 charging Ramos of the crime of Illegal Sale of Dangerous Drugs, the accusatory portion of which states:

That on or about the 12<sup>th</sup> day of November 2010, in Quezon City, Philippines, the above-named accused, without lawful authority, did then and there willfully and unlawfully sell, trade[,] administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broker in the said transaction, dangerous drugs, to wit:

one (1) heat[-] sealed transparent plastic sachet containing zero point zero eight ten (0.0810) gram of white crystalline subs[tance]

one (1) heat[-]sealed transparent plastic sachet containing zero point zero four five nine (0.0459) gram of white crystalline subs[tance]

one (1) heat[-]sealed transparent plastic sachet containing zero point zero six one six (0.0616) gram of white crystalline subs[tance]

one (1) heat[-]sealed transparent plastic sachet containing zero point zero five one nine (0.0519) gram of white crystalline subs[tance]

one (1) heat[-] sealed transparent plastic sachet containing zero point zero five thirty (0.0530) gram of white crystalline subs[tance]

with a total of **ZERO POINT TWENTY NINE THIRTY FOUR (0.2934) grams**, all positive for Methamphetamine Hydrochloride otherwise known as shabu.

CONTRARY TO LAW.<sup>[6]</sup> (Emphasis and underscoring supplied)

The prosecution alleged that at around 8:00 o'clock in the evening of November 12, 2010, the operatives of the Philippine Drug Enforcement Agency (PDEA) went to Pingkian, Pasong Tamo, Quezon City, in order to implement a pre-organized buy-bust operation targeting a certain "Wilson" (later identified as Ramos) who was known to be a notorious drug pusher in the area. Upon arrival, the poseur-buyer, Intelligence Officer 1 Cesar Dealagdon, Jr. (IO1 Dealagdon) and the confidential informant met with Ramos, who immediately demanded the money. Since IO1 Dealagdon requested that the "item" be shown first, Ramos took out a black coin purse from his pocket and pulled out five (5) sachets containing the suspected *shabu* therefrom. After giving the marked money to Ramos and receiving the sachets from him, IO1 Dealagdon performed the pre-arranged signal, prompting his back-ups to swoop in and arrest Ramos. Ramos was then frisked, resulting in the recovery of the marked money, and thereafter, was brought to the police station. Thereat, the PDEA operatives conducted the inventory and photography of the seized items in the presence of Barangay Kagawad Jose Ruiz (Kgd. Ruiz). IO1 Dealagdon then brought the seized items to the PDEA Crime Laboratory where the contents were confirmed<sup>[7]</sup> to be methamphetamine hydrochloride or *shabu*.<sup>[8]</sup>

For his part, Ramos pleaded not guilty to the charge against him and interposed the defenses of denial and frame-up.<sup>[9]</sup> He maintained that at around 3 o'clock in the afternoon of the day he was arrested, he was driving his tricycle towards home when he decided to park at a jeepney terminal. After a while, a motor vehicle stopped near him, from which armed men came out. He was asked where the "items" were but after answering that he did not know, the armed men mauled him and forcefully boarded him inside their vehicle. He was then taken to Camp Crame where he saw the man arrested before him released from custody. Finally, Ramos claimed that he only saw the black coin purse and the five (5) small plastic sachets for the first time after they came from Barangay Pinyahan *en route* to the PDEA Office.<sup>[10]</sup>

### **The RTC Ruling**

In a Judgment<sup>[11]</sup> dated October 23, 2015, the RTC found Ramos 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 all the essential elements in the Illegal Sale of Dangerous Drugs have been proven, to wit: (a) the transaction or sale took place; (b) the *corpus delicti* or the illicit drug was presented as evidence; and (c) the buyer and seller were identified. It found that the prosecution was able to establish that a sale actually took place between IO1 Dealagdon, the poseur-buyer, and Ramos, who was caught in *flagrante delicto* selling *shabu*, during the conduct of a buy-bust operation. Moreover, the RTC held that the prosecution has sufficiently shown that the integrity and evidentiary value of the confiscated items were duly preserved in this case, pointing out that the chain of custody of the said items was shown to be continuous and unbroken, from the time IO1 Dealagdon recovered the same from Ramos until they were turned over to the PDEA Crime Laboratory and examined. Accordingly, the RTC upheld the presumption of regularity in the performance of duty of the arresting officers in the absence of showing that they were motivated by ill will against Ramos. Finally, the RTC rejected Ramos's defenses of denial and frame-up, being inherently weak defenses against the positive testimonies of the prosecution witnesses.<sup>[13]</sup>

Aggrieved, Ramos appealed<sup>[14]</sup> to the CA.

### **The CA Ruling**

In a Decision<sup>[15]</sup> dated March 21, 2017, the CA affirmed *in toto* the RTC ruling, holding that the prosecution had shown the presence of all the elements of the crime charged.<sup>[16]</sup> It further refused to give credence to Ramos's insistence that the arresting officers failed to observe the chain of custody rule regarding the disposition of the seized items, i.e., failure to make an inventory at the place of his arrest in the presence of a media man or a government official, as the PDEA operatives offered a justifiable explanation for the same. In view thereof, as well as the fact that the arresting officers sufficiently complied with the proper procedure in the handling of the seized items, the CA concluded that the integrity and evidentiary value of the seized items have been preserved.<sup>[17]</sup>

Hence, this appeal.<sup>[18]</sup>

### **The Issue Before the Court**

The issue for the Court's resolution is whether or not the CA correctly upheld Ramos's conviction for the crime charged.

### **The Court's Ruling**

At the outset, it must be stressed that an appeal in criminal cases opens the entire case for review, and thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned.<sup>[19]</sup> "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."<sup>[20]</sup>

Ramos was charged with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. In every prosecution of unauthorized sale of dangerous drugs, it is essential that the following elements be proven beyond reasonable doubt: (a) the identity of the buyer and the seller, the object, and the consideration; and (b) the delivery of the thing sold and the payment.<sup>[21]</sup>

Moreover, the prosecution must prove with moral certainty the identity of the prohibited drug, as the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. It 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 from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>[22]</sup>

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value.<sup>[23]</sup> Under the said section, prior to its amendment by RA 10640,<sup>[24]</sup> the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were**

**seized, or his 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 of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.<sup>[25]</sup> In the case of *People v. Mendoza*,<sup>[26]</sup> the Court stressed that "[**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 RA 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.** Indeed, the x x x presence of such witnesses would have preserved an unbroken chain of custody."<sup>[27]</sup>

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible.<sup>[28]</sup> In fact, the Implementing Rules and Regulations (IRR) of RA 9165 - which is now crystallized into statutory law with the passage of RA 10640 - provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21 of RA 9165 - under justifiable grounds - will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team.**<sup>[29]</sup> In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and its IRR does 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 justifiable ground for non-compliance; **and** (b) the integrity and evidentiary value of the seized items are properly preserved.<sup>[30]</sup> In *People v. Almorfe*,<sup>[31]</sup> **the Court explained that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and evidentiary value of the seized evidence had nonetheless been preserved.**<sup>[32]</sup> Also, in *People v. De Guzman*,<sup>[33]</sup> it was emphasized 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.**<sup>[34]</sup>

After a judicious study of the case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Ramos.

*First*, although it is true that the seized plastic sachets were marked in the presence of Ramos himself and an elected public official, *i.e.*, Kgd. Ruiz, the same was not done in the presence of any representative from the DOJ and the media. IO1 Dealagdon admitted this when he testified on direct and cross-examinations, thus:

DIRECT EXAMINATION:

[ACP Bartolome]: Mr. witness, who were present during the inventory?

[IO1 Dealagdon]: The accused alias Wilson, Barangay elected official, Kagawad Ruiz, me, Agent Oliver dela Rosa, and other members of team, sir.

Q: How about DOJ representative?

A: None, sir.<sup>[35]</sup>

CROSS-EXAMINATION:

[Atty. Manzano]: After the arrest of alias Wilson, you immediately proceeded to Barangay Pinyahan, correct?

[IO1 Dealagdon]: Yes, ma'am.

Q: And according to you, you conducted the marking, inventory and photograph?

A: Yes, ma'am.

Q: The marking and inventory was not done in the presence of representative from the Media and DOJ, correct?

A: Yes, ma'am.<sup>[36]</sup>

When asked to explain the absence of any representatives from the DOJ and the media during the conduct of inventory and photography, Intelligence Officer 1 Oliver Dela Rosa (IO1 Dela Rosa), another member of the buy-bust team, testified:

[ACP Bartolome]: Who were present during the preparation of this Inventory?

[IO1 Dela Rosa]: Kagawad Ruiz, sir.

Q: Of what barangay?

A: Brgy. Pinyahan, sir.

Q: Why is it that there [is] no signatures in this space provided for the representative of the DOJ and media?

A: There was no media available, sir.

Q: Why?

A: It was past office hours and we cannot find a media, sir.<sup>[37]</sup>

The Court finds the aforesaid explanation inadequate for the saving clause to apply. As may be gleaned from the records, as early as 2:30 in the afternoon of November 12, 2010, the PDEA operatives already conducted a briefing where they organized the buy-bust operation against Ramos; and such operation was implemented at 8 o'clock in the evening of even date.<sup>[38]</sup> Verily, the PDEA operatives had hours to spare before the buy-bust team was deployed in Pingkian, Pasong Tamo, Quezon City to implement the entrapment operation against Ramos. They could have used that time to secure the presence of representatives from the DOJ and the media