

## SECOND DIVISION

[ G.R. No. 233100, February 14, 2018 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
CRISTHIAN[\*] KEVIN GUIEB Y BUTAY, 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 Cristhian Kevin Guieb y Butay (Guieb) assailing the Decision<sup>[2]</sup> dated January 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07770, which affirmed the Decision<sup>[3]</sup> dated August 28, 2015 of the Regional Trial Court of Laoag City, Ilocos Norte, Branch 13 (RTC) in Crim. Case Nos. 15685-13 and 15686-13 finding him guilty beyond reasonable doubt of violating Sections 5 and 11, 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 two (2) Informations filed before the RTC charging Guieb of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, the accusatory portions of which state:

#### **CRIM. CASE NO. 15685-13**<sup>[5]</sup>

That on or about 12:30 o'clock in the afternoon of September 28, 2013, at Brgy. 5 San Silvestre, municipality of San Nicolas, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously sell one small heat-sealed transparent plastic sachet containing 0.1033<sup>[6]</sup> gram of methamphetamine hydrochloride, commonly known as "*shabu*", a dangerous drug, in the amount of Five Hundred Pesos (P500.00) to police poseur-buyer, without any authority or license from the appropriate government agency to do so.

CONTRARY TO LAW.<sup>[7]</sup>

#### **CRIM. CASE NO. 15686-13**<sup>[8]</sup>

That on or about September 28, 2013 at Brgy. 5 San Silvestre, Municipality of San Nicolas, province of Ilocos Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and knowingly have in his possession, control and custody one (1) small heat-sealed transparent plastic sachet containing 0.0635 gram of methamphetamine hydrochloride, commonly known as "*shabu*", a dangerous drug, without

any authority or license from the appropriate government agency to do so.

CONTRARY TO LAW.<sup>[9]</sup>

The prosecution alleged that at around 11:30 in the morning of September 28, 2013 and upon the report of an informant, the Provincial Anti-Illegal Drugs Special Operations Task Group (PAIDSOTG) of the Provincial Police Office of Ilocos Norte organized a buy-bust team operation with the objective of apprehending Guieb, who was verified to be number four (4) in PAIDSOTG, as well as in the Philippine Drug Enforcement Agency's lists of drug personalities. Upon arrival at the *carinderia* where the buy-bust was to be held, the poseur-buyer, Police Officer 2 Richard Rarangol (PO2 Rarangol), and the informant were approached by Guieb. After some preliminaries, PO2 Rarangol gave the marked money to Guieb, who in turn, gave the former a plastic sachet containing a white crystalline substance. When the transaction was consummated, PO2 Rarangol performed the pre-arranged signal, prompting backups Police Officer 2 Jay Arr Agtang and Police Officer 1 Hayden Waga (PO1 Waga) to rush to the scene and arrest Guieb. Upon frisking Guieb, PO1 Waga recovered another sachet containing white crystalline substance, which he gave to PO2 Rarangol. The buy-bust team then brought Guieb and the seized items to the Municipal Police Station of San Nicolas.<sup>[10]</sup>

Thereat, PO2 Rarangol conducted the marking, inventory, and photography of the seized items in the presence of Guieb and Barangay Captain Francisco Bagay, Sr. (Brgy. Capt. Bagay). Thereafter, PO2 Rarangol brought the seized sachets to the crime laboratory where a qualitative examination of the contents revealed<sup>[11]</sup> that the same were positive for *methamphetamine hydrochloride* or *shabu*.<sup>[12]</sup>

In his defense, Guieb denied the allegations against him. He maintained that at around noon of the day when he was arrested, he and his daughter went to a neighbor's house to invite the latter to his child's baptism. After talking to said neighbor, Guieb sought out his daughter who was then playing in front of the *carinderia* where he was arrested.<sup>[13]</sup> He further maintained that he and his daughter were about to go home when two (2) policemen arrested him and took him to the police station for allegedly running away with the money of another policeman. At the police station, he was made to sit in front of the table where PO2 Rarangol brought out two (2) sachets appearing to contain *shabu*, and placed it on top of the table. PO2 Rarangol also took out a piece of paper with the word "inventory" therein and started filling out the same. Thereafter, PO2 Rarangol asked Brgy. Capt. Bagay to sign the paper, but the latter refused as he did not see how Guieb was arrested.<sup>[14]</sup>

### **The RTC Ruling**

In a Decision<sup>[15]</sup> dated August 28, 2015, the RTC found Guieb guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (a) in Crim. Case No. 15685-13, Guieb was sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00; and (b) in Crim Case No. 15686-13, Guieb was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day to fourteen (14) years and to pay a fine in the amount of P300,000.00.<sup>[16]</sup>

The RTC found that the prosecution had established the presence of all the elements of the crime charged, as it was shown that: (a) Guieb was caught in the act of selling *shabu* through the buy-bust operation conducted against him; and (b) after his apprehension, the arresting officers frisked Guieb and discovered another plastic sachet containing *shabu* in his possession.<sup>[17]</sup> Further, the RTC observed that the integrity and evidentiary value of the *shabu* seized from Guieb were preserved as the police officers complied with the chain of custody rule under the law.<sup>[18]</sup>

Aggrieved, Guieb appealed<sup>[19]</sup> to the CA.

### **The CA Ruling**

In a Decision<sup>[20]</sup> dated January 17, 2017, the CA affirmed *in toto* the RTC ruling, holding that the prosecution had shown the presence of all the elements of the crimes charged.<sup>[21]</sup> It further held that the arresting officers complied with the chain of custody rule, considering that: (a) on September 28, 2013, PO2 Rarangol seized the *shabu* from Guieb; (b) he conducted the marking and inventory of the same in the presence of Brgy. Capt. Bagay, and thereafter, prepared a request for laboratory examination; (c) on even date, PO2 Rarangol himself transmitted the seized items and the necessary-paperwork to the crime laboratory, which were received by Senior Police Officer 4 Arnulfo Burbano (SPO4 Burbano); and (d) SPO4 Burbano brought the seized items to Forensic Chemist Amiely Ann Luis Navarro, who, after conducting a qualitative examination, confirmed that the seized items were indeed methamphetamine hydrochloride or *shabu*.<sup>[22]</sup>

Hence, this appeal.<sup>[23]</sup>

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

The issue for the Court's resolution is whether or not the CA correctly upheld Guieb's conviction for the crimes 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>[24]</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>[25]</sup>

Guieb was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11 (3), Article II of RA 9165. In every prosecution of unauthorized sale of dangerous drugs, it is essential that the following elements are 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>[26]</sup> Meanwhile, in order to convict an accused who is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements also by proof beyond reasonable doubt: (a) the accused was in possession of an item or object identified as a prohibited drug;

(b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.<sup>[27]</sup>

In both cases, the prosecution must prove with moral certainty the identity of the prohibited drug, considering that the dangerous drug itself forms an integral 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 from the moment the drugs are seized up to their presentation in court as evidence of the crime.<sup>[28]</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>[29]</sup> Under the said section, prior to its amendment by RA 10640,<sup>[30]</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>[31]</sup> In the case of *People v. Mendoza*,<sup>[32]</sup> the Court stressed that "**[w]ithout 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] 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>[33]</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>[34]</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<sup>[35]</sup> - 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>[36]</sup> Tersely put, 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>[37]</sup> In *People v. Almorfe*,<sup>[38]</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>[39]</sup> Also, in *People v. De Guzman*,<sup>[40]</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>[41]</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 Guieb.

First, records reveal that while the requisite inventory and photography of the confiscated drugs were indeed conducted, a reading of the Certificate of Inventory<sup>[42]</sup> shows that only an elected official, i. e., Brgy. Capt. Bagay, was present and that there were no representatives from the DOJ and the media. This mishap was made more apparent by PO2 Rarangol's testimony in direct and cross-examinations, to wit:

DIRECT EXAMINATION:

[Prosecutor Garcia]: Were you able to reach the San Nicolas Police Station?

[PO2 Rarangol]: Yes, sir.

Q: While you were there as you said it will be there where you will wait for the barangay officials, were you able to wait for the barangay officials?

A: Yes, sir.

Q: And who were/was the barangay official who come [sic]?

A: The Brgy. Captain of Brgy. 5, sir.

Q: What did you do when the Barangay Captain of Brgy. 5 arrived?

A: I marked the confiscated items, sir.

x x x x

Q: How about the Barangay Captain, where was he?

A: He was also there, sir.

x x x x

Q: I am showing you Mr. Witness, a document entitled Certificate of Inventory where there are There is a list of two (2) plastic sachets containing white crystalline substance, P500.00 bill bearing serial number BP103932, one (1) Nokia cellphone, one (1) pack transparent plastic sachet containing plastic, one (1) wallet containing driver's license and one (1) blue lighter previously marked as Exhibit "F" found on page 36 of the record, will you please go over the same and tell to us what is the relation of these to the one you mentioned earlier where you place the listing of the items?

A: This is the one, sir.