

SECOND DIVISION

[G.R. No. 230065, March 14, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCELINO CRISPO Y DESCALSO ALIAS "GOGO" AND ENRICO
HERRERA Y MONTES, ACCUSED-APPELLANTS.**

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal^[1] filed by accused-appellants Marcelino Crispo y Descalso alias "Gogo" (Crispo) and Enrico Herrera y Montes (Herrera; collectively, accused-appellants) assailing the Decision^[2] dated March 17, 2016 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07117, which affirmed the Decision^[3] dated October 24, 2014 of the Regional Trial Court of Manila, Branch 2 (RTC) in Crim. Case Nos. 12-293828 and 12-293829 finding: (a) accused-appellants guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,^[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002"; and (b) Crispo guilty beyond reasonable doubt of violating Section 11, Article II of the same law.

The Facts

This case stemmed from two (2) Informations^[5] filed before the RTC charging accused-appellants of the crime of Illegal Sale of Dangerous Drugs, and Crispo of the crime of Illegal Possession of Dangerous Drugs, the accusatory portions of which state:

Crim. Case No. 12-293828

That on or about November 19, 2012, in the City of Manila, Philippines, the said [accused-appellants], conspiring and confederating together and mutually helping each other, not being then authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully, knowingly and jointly sell one (1) heat sealed transparent plastic sachet containing ZERO POINT ZERO TWO THREE (0.023) gram of white crystalline substance containing methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[6]

Crim. Case No. 12-293829

That on or about November 19, 2012, in the City of Manila, Philippines, [Crispo], not being then authorized by law to possess any dangerous drug, did then and there willfully, unlawfully, and knowingly possess or have under his control three (3) heat-sealed transparent plastic sachets containing white crystalline substance weighing zero point zero three seven (0.037) gram, zero point zero two five (0.025) gram and zero point zero one nine (0.019) gram or in the total weight of zero point zero eight one (0.081) gram of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[7]

The prosecution alleged that at around 1 :30 in the afternoon of November 19, 2012,^[8] a confidential informant (CI) tipped the Manila Police District Station 4 (MPD) of the alleged illegal drug activities of a certain alias "Gogo" (later identified as Crispo) at Ma. Cristina Street, Sampaloc, Manila. Thus, after coordinating with the operatives of the Philippine Drug Enforcement Agency, the MPD organized a buy-bust operation at the said area, with Police Officer (PO) 2 Dennis Reyes (PO2 Reyes) as the poseur buyer. Upon arrival at the area at around 5:30 in the afternoon of even date, the CI and PO2 Reyes saw Crispo talking to his runner, Herrera, and decided to approach them. As they went nearer, Herrera approached the CI and PO2 Reyes, while Crispo remained about five (5) to six (6) meters away. PO2 Reyes then signified his intention of buying *shabu*, prompting Herrera to get the marked money from him, and thereafter, approach Crispo in order to remit the money and get a sachet containing white crystalline substance from the latter. When Herrera handed over the sachet to PO2 Reyes, the latter performed the pre-arranged signal, directly causing his backups to rush into the scene and apprehend accused-appellants. Upon frisking accused appellants, the arresting officers recovered three (3) other plastic sachets containing white crystalline substance from Crispo. The accused-appellants and the seized items were then taken to the barangay office where the arresting officers, *inter alia*, conducted the inventory and photography in the presence of two (2) barangay kagawads, as indicated in the Receipt of Property/Evidence Seized.^[9] After examination^[10] at the Crime Laboratory, it was confirmed that the sachets seized from accused-appellants contain methamphetamine hydrochloride, or *shabu*.^[11]

Accused-appellants pleaded not guilty to the crimes charged^[12] and offered their version of the events. According to Crispo, he was just on board a tricycle going to his niece's house when suddenly, a car with five (5) policemen in civilian clothes blocked the tricycle's path. One of the policemen then poked a gun at Crispo, and told him, "*Mga pulis kami, sumama ka sa presinto.*" Fearful for his life, Crispo complied. Upon arrival at the police station, the policemen demanded from him P30,000.00 for his release; otherwise, they will plant evidence against him. The policemen then proceeded to show him four (4) sachets of *shabu* which will be used against him. For his part, Herrera averred that he was riding a bicycle when he accidentally bumped a brown van. Three (3) men then alighted from the van, arrested him, and took him to the police station. Thereat, an affidavit was

purportedly prepared for him and that he signed the same even without reading it out of confusion.^[13]

The RTC Ruling

In a Decision^[14] dated October 24, 2014, the RTC found accused appellants guilty beyond reasonable doubt of the crimes charged and, accordingly, sentenced them as follows: (a) for Illegal Sale of Dangerous Drugs, the RTC sentenced accused-appellants to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00; and (b) for Illegal Possession of Dangerous Drugs, the RTC sentenced Crispo to suffer the penalty of imprisonment for the indeterminate period of twelve (12) years and one (1) day, as minimum, to seventeen (17) years and four (4) months, as maximum, and to pay a fine in the amount of P300,000.00.^[15]

The RTC found that the prosecution was able to establish all the elements of the crimes charged as it was shown that accused-appellants sold to PO2 Reyes one (1) sachet of *shabu* and that after their arrest, three (3) more sachets of *shabu* were found in Crispo's possession. On the other hand, the RTC did not give merit to accused-appellants' imputation of ill-motive against their arresting officers after finding it unsubstantiated.^[16]

Aggrieved, accused-appellants appealed^[17] to the CA.

The CA Ruling

In a Decision^[18] dated March 17, 2016, the CA affirmed the RTC ruling.^[19] It held that the prosecution had established beyond reasonable doubt all the elements of the crimes charged. Further, the CA ruled that the absence of representatives from the DOJ and the media during the conduct of the inventory is not fatal to the prosecution of accused-appellants, so long as the integrity and evidentiary value of the seized items are preserved.^[20]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellants' conviction for the crimes charged.

The Court's Ruling

I.

During the pendency of this appeal, the Court received a letter^[21] dated September 7, 2017 from the Bureau of Corrections, informing it that Herrera had already died on April 3, 2017. Attached thereto is a duplicate copy of Herrera's Certificate of

Death^[22] issued by the Officer of the Civil Registrar General.

Under Paragraph 1, Article 89 of the Revised Penal Code, the consequences of Herrera's death are as follows:

Art. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:

1. By the death of the convict, as to the personal penalties; and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment;

x x x x

In *People v. Jao*,^[23] the Court eloquently summed up the effects of the death of an accused pending appeal on his liabilities,^[24] as follows:

From this lengthy disquisition, we summarize our ruling herein:

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon. As opined by Justice Regalado, in this regard, "the death of the accused prior to final judgment terminates his criminal liability and only the civil liability directly arising from and based solely on the offense committed, *i.e.*, civil liability *ex delicto in senso strictiore*." ^[25]

Thus, upon Herrera's death pending appeal of his conviction, the criminal action against him is extinguished inasmuch as there is no longer a defendant to stand as the accused. As such, the criminal case against him is hereby dismissed, and declared closed and terminated.^[26]

II.

With respect to Crispo, the Court finds his appeal meritorious.

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

Here, Crispo was charged with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. Notably, in order to properly secure the conviction of an

accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (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.^[29] Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (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.^[30]

Case law states that in both instances, it is essential that the identity of the prohibited drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.^[31]

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.^[32] Under the said section, prior to its amendment by RA 10640,^[33] 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.^[34] In the case of *People v. Mendoza*,^[35] 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."^[36]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21, Article II of RA 9165 may not always be possible.^[37] In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640^[38] – 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, Article II 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.**^[39] In other words, the failure of the apprehending