

SECOND DIVISION

[G.R. No. 226481, April 18, 2018]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. JAYCENT MOLA Y SELBOSA A.K.A. "OTOK", ACCUSED-APPELLANT.

D E C I S I O N

PERALTA, J.:

On appeal is the April 15, 2016 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07419, which affirmed the March 9, 2015 Decision^[2] of Regional Trial Court (RTC), Branch 44, Dagupan City, Pangasinan, in Criminal Case No. 2012-0027-D, convicting appellant Jaycent Mola y Selbosa a.k.a. "Otok" (*Mola*) for illegal sale of Methamphetamine Hydrochloride, commonly known as *shabu*, in violation of Section 5, Article II of Republic Act (R.A.) No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*.

The Information dated January 16, 2012 charged Mola as follows:

That on or about the 14th day of January, 2012, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused **JAYCENT MOLA y Selbosa @ Otok**, did then and there, willfully, unlawfully and criminally, sell and deliver to a poseur-buyer a Methamphetamine Hydrochloride (Shabu) contained in one (1) heat sealed plastic sachet weighing more or less 0.04 grams, in exchange of P500.00, without authority to do so.

Contrary to Article II, Section 5, R.A. 9165.^[3]

In his arraignment, Mola entered a plea of "Not Guilty."^[4] He was detained at the city jail during the trial of the case.^[5]

The prosecution presented SPO4 Enrique Columbino (*Columbino*), PO2 Joeffrey Fulido (*Fulido*), SPO1 Salvador Cacho (*Cacho*), SPO3 Dante Marmolejo (*Marmolejo*), and PS/Insp. Myrna C. Malojo-Todeño (*Malojo-Todeño*). Only Mola testified for the defense.

SPO4 Columbino testified that: he was assigned as an Intelligence Operative at the Dagupan City Police Station; acting on a confidential information, he conducted a buy-bust operation on January 14, 2012 against Mola in *Sitio* Kamanang, Bonuan Tondaligan, Dagupan City; prior to the operation, he communicated to his superior, PCI Giovanni Mangonon, and prepared the marked money by using his own P500 bill; he coordinated with PCI Mangonon while he was accompanied by a civilian asset in Bonuan Gueset; it was past 5 to 6 o'clock in the afternoon when he was instructed to proceed to *Sitio* Kamanang; he boarded a tricycle going to the area together with the civilian asset and companions from the Police Community Precinct (PCP) of Bonuan Tondaligan; upon arrival thereat, the civilian asset pointed to him

Mola, who was about seven (7) meters away and staying in front of Jerry Cayabyab's (*Cayabyab*) store; while inside the tricycle, he waived to Mola with the use of the marked money, extending his finger and putting it under his nose to signify the use of shabu; Mola waived back at him and entered an alley; he waited for him in front of the store and, after a few minutes, Mola went out of the alley and gave him a sachet of *shabu* in exchange of the P500 bill; thereafter, he held Mola's hands and identified himself as a police officer; by that time, Cayabyab alighted from a passenger jeepney and asked, "*Akin tan? Akin tan?*" (*What is that? What is that?*); he showed him the seized sachet of *shabu* and told him to inform Mola's relatives to follow him to the PCP Tondaligan, where he marked the seized items and prepared the confiscation/inventory receipt; they proceeded to the Dagupan City Police Station, where he turned over Mola, the sachet of *shabu*, the buy-bust money, and the confiscation/inventory receipt to Duty Investigator SPO3 Marmolejo; the following day, he got back the sachet of *shabu* from SPO3 Marmolejo and brought it to the PNP Crime Laboratory in Lingayen, Pangasinan, on the basis of the letter-request prepared by SPO3 Marmolejo; and he returned to Cayabyab's store to ask him to sign the confiscation/inventory receipt, which the latter did by printing his name on it.

PO2 Fulido attested to the fact that he was the Blotter Book Custodian in relation to Entry Nos. 747 and 748 of Volume 93, Series of 2011 of the Blotter Book of the Dagupan City Police Station since PO3 Crisostomo Benevente, the one who recorded the incident, had retired from service.^[6] After he read the contents of the Blotter Book, the defense counsel admitted that the Certification attached to the case records is a faithful reproduction of the entries in the Blotter Book.^[7]

The testimonies of the following witnesses were dispensed with in view of the admission of the defense counsel:

SPO1 Cacho – He was the one who prepared the letter request for laboratory examination, coordination form, pre-operation report, and letter to the Dangerous Drugs Board as well as the one who took the pictures on Mola's arrest.^[8]

SPO3 Marmolejo – On January 14, 2012, he was the Duty Investigator in tandem with SPO1 Cacho; on said date, he received from SPO4 Columbino one (1) plastic sachet of *shabu* for safekeeping after Mola was arrested; and on the next day, he returned said plastic sachet of *shabu* to SPO4 Columbino for the latter to bring it for laboratory examination.^[9]

PS/Insp. Malojo-Todeño – She was the Forensic Chemist who received the letter-request as well as the specimen submitted which was one (1) heat-sealed plastic sachet of *shabu*; upon receipt thereof, she conducted a qualitative examination on the specimen, which yielded positive result to the test of Methamphetamine Hydrochloride; and said result was reduced into writing, evidenced by Initial Laboratory Report and Final Chemistry Report.^[10]

In his defense, Mola denied the accusation that he sold *shabu* to SPO4 Columbino. Instead, he testified that around 6:30 p.m. on January 14, 2012 he was at the store owned by Cayabyab to buy cigarettes; the store was about twenty (20) meters away from his house located in *Sitio* Kamanang, Bonuan Gueset; he just finished eating and went to the store when he saw a tricycle stopped behind his back and its driver pointed at him; a passenger then got off from the tricycle, immediately held his

right hand, and brought him inside; both the tricycle driver and the passenger, whose identities are unknown to him, were not in police uniform; he did not protest or shout but inquired on why he was being taken away; when they arrived at the Tondaligan Police Station, the tricycle driver opened his belt bag and brought out a P500 bill and a plastic sachet of *shabu*; despite having seen this, he did not disclose the matter to the investigator; and from the Bonuan Police Precinct, he was transferred to the police headquarters in Babaliwan, where he first met SPO4 Columbino and learned that he was being indicted for sale of dangerous drugs.

On March 9, 2015, the RTC found Mola guilty of the crime charged. He was sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00) as well as the costs of suit.

Mola appealed to the CA on the grounds that:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE BUY-BUST TEAM TO COMPLY WITH SECTION 21, ARTICLE II OF R.A. NO. 9165.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH AN UNBROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY SEIZED DANGEROUS DRUGS.^[11]

It was contended that the prosecution failed to comply with Section 21 (1), Article II of R.A. No. 9165. In particular: (1) SPO4 Columbino did not immediately mark the seized sachet of *shabu* even if he could have easily done so at the place of arrest; (2) the confiscation report shows that no representatives from the Department of Justice (DOJ), the local government, and the media attended the marking and inventory of the seized items; (3) together with the seized illegal drugs, SPO4 Columbino went back to Cayabyab's house for the latter's signing of the confiscation receipt; (4) after turning over the plastic sachet and inventory receipt to the investigating officer, SPO4 Columbino once again took possession of the alleged *shabu* for the purpose of bringing the same to the forensic chemist; and (5) there is no testimony or a stipulation to the effect that the forensic chemist received the seized article as marked, properly sealed and intact, that she resealed it after examination of the content, and that she placed her own marking on the same to ensure that it could not be tampered pending trial.

The conviction of Mola was sustained. For the appellate court, the recovery and handling of the seized illegal drugs were more than satisfactorily established. Considering that the integrity of the confiscated sachet of *shabu* has been maintained, it was held that the absence of an elected public official and representatives from the media and the DOJ during the inventory-taking and photograph is not deemed as fatal to the prosecution's case. Moreover, R.A. No. 9165 and its Implementing Rules and Regulations (*IRR*) expressly authorizes the marking and inventory-taking of the seized contraband "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable," in case of a warrantless seizure resulting from a buy-bust operation.

Before Us, both Mola and the People manifested that they would no longer file a Supplemental Brief, taking into account their discussions on the issues in their respective Briefs before the CA.^[12]

The appeal is meritorious.

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165^[13] specifies:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her 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 thereof.

Supplementing the above-quoted provision, Section 21 (a) of the IRR of R.A. No. 9165 provides:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her 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 thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

On July 1, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the

nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."^[14] Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended."^[15] In addition, "[t]he requirement that inventory is required to be done in a police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."^[16]

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."^[17] In his Co-sponsorship Speech, he noted:

Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.

x x x x Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more