

SECOND DIVISION

[G.R. No. 233572, July 30, 2018]

**ALFREDO A. RAMOS, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated March 21, 2017 and the Resolution^[3] dated August 4, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38528, which affirmed the Decision^[4] dated August 27, 2015 of the Regional Trial Court of Binangonan, Rizal, Branch 67 (RTC) in Criminal Case No. 12-0227, finding petitioner Alfredo A. Ramos (Ramos) guilty beyond reasonable doubt of the crime of Illegal Possession of Dangerous Drugs as defined and penalized under Section 11, Article II of Republic Act (RA) No. 9165,^[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

On May 8, 2012 an Information was filed before the RTC charging Ramos of violation of Section 11, Article II of RA 9165, the accusatory portion of which reads:

That on or about the 1st day of May 2012, in the Municipality of Angono, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without having been authorized by law to possess any dangerous drug, did then and there willfully, unlawfully and knowingly possess and have in his custody and control 0.05 gram of white crystalline substance contained in one (1) heat-sealed transparent plastic sachet, which was found positive to the test for Methamphetamine Hydrochloride, also known as "shabu", a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.^[6]

The prosecution alleged that on May 1, 2012, acting upon the information of a police asset that a certain "Nonong" later identified as Ramos - was bringing in *shabu* from Lupang Arienda to Barangay (Brgy.) San Roque, Angono, Rizal, Senior Police Officer 1 (SPO1) Pablo Medina (SPO1 Medina), together with three (3) other police officers, took their positions at Col. Guido St., Brgy. San Roque. After waiting for a while, Ramos arrived at the location, and later, two (2) unidentified men came and talked to him. The three (3) men then started fighting, which prompted the police officers to approach and pacify them. However, the men escaped, except for Ramos who was caught by SPO1 Medina. Ramos then took something from his pocket and tried to throw away a pack of cigarettes containing a plastic sachet, which SPO1 Medina was able to intercept. Thereafter, the latter proceeded to the Angono Police Station

where he turned over Ramos and the seized items to police investigator SPO1 Ian Voluntad (SPO1 Voluntad) for marking and taking of photographs. Thereat, SPO1 Voluntad marked the plastic sachet with "AAR-1" and the cigarette pack as "AAA-2" and then delivered the items to the crime laboratory where it was confirmed^[7] that the seized items contained 0.05 gram of methamphetamine hydrochloride or *shabu*, an illegal drug.^[8]

In his defense, Ramos pleaded not guilty and denied the charge against him. He then narrated that on the date he was arrested, he received a call from his friend Brandon Balais (Balais) who invited him to go to Angono, Rizal for Balais's birthday. At around 4:00 o'clock in the afternoon, he arrived at the Angono Caltex gas station, lit a cigarette, and while waiting, a man in civilian clothes started to frisk him. Thereafter, the man showed him a cigarette case with *shabu* inside and claimed that he owned it. When he denied, he was brought inside an office where a report was instantly prepared against him.^[9]

The RTC Ruling

In a Decision^[10] dated August 27, 2015, the RTC found Ramos guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to thirteen (13) years, as maximum, and to pay a fine in the amount of P300,000.00.^[11]

The RTC found that the prosecution had established beyond reasonable doubt that Ramos committed the crime charged as he was caught *in flagrante delicto* by the arresting police officers in possession of a sachet containing *shabu*. In this regard, the RTC pointed out that the chain of custody of the seized drug had been preserved, since it was brought to the crime laboratory on the date of the seizure.^[12]

Aggrieved, Ramos appealed^[13] to the CA.

The CA Ruling

In a Decision^[14] dated March 21, 2017, the CA upheld the RTC ruling, finding all the elements of the crime present, and further holding that the prosecution was able to establish an unbroken chain of custody of the illegal drug from the time of its confiscation by SPO1 Medina until its identification in court. It ruled that despite the failure to strictly follow the requirements under Section 21, Article II of RA 9165, the following circumstances show substantial compliance thereof: (a) the marking and inventory of the subject specimen were immediately done at the police station; and (b) the absence of representatives from the DOJ and the media, or any elected official during the inventory was justified, since SPO1 Medina exerted efforts to secure their presence but they failed to appear. The CA further pointed out that while the photographs of the seized items were not presented as evidence, SPO1 Medina testified that pictures were actually taken by SPO1 Voluntad. Finally, the CA held that it is within the prosecution's discretion whether or not to present SPO1 Voluntad but in any case, the failure to do so was not crucial in proving Ramos's guilt.^[15]

Unperturbed, Ramos moved for reconsideration^[16] which was, however, denied in a Resolution^[17] dated August 4, 2017; hence, this petition.^[18]

The Issue Before the Court

The issue for the Court's resolution is whether or not Ramos is guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious.

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.^[19] "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."^[20]

In this case, Ramos was charged with Illegal Possession of Dangerous Drugs, defined and penalized under Section 11, Article II of RA 9165. In order to properly secure the conviction of an accused charged with Illegal Possession of Dangerous Drugs, the prosecution must prove that: (a) the accused was in possession of an item or object identified as a dangerous drug; (b) such possession was not authorized by law; and (c) the accused freely and consciously possessed the said drug.^[21] Notably, 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.^[22]

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.^[23] Under the said section, prior to its amendment by RA 10640,^[24] 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.^[25] In the case of *People v. Mendoza*,^[26] the Court stressed that "**[w]ithout the insulating presence of the representative from the media or the Department of Justice, 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."^[27]

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.^[28] 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.**^[29] 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.^[30] In *People v. Almorfe*,^[31] **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.**^[32] Also, in *People v. De Guzman*,^[33] 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.**^[34]

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.

It is glaring from the records that no less than SPO1 Medina admitted on cross-examination that the inventory of the drugs purportedly seized from Ramos was conducted **without** the presence of any elected public official or representatives from both the DOJ and the media.^[35] When questioned on the reason behind such irregularity, SPO1 Medina offered the following justification:

[PROSECUTOR CO]: In this inventory it appears that there is no signature coming from an elected official, media representative and DOJ representative, why is it so?

[SPO1 Medina]: At that time, there were no available barangay kagawad(s), Sir.

[PROSECUTOR CO]: How [about] the media and the DOJ representative,

did you exert effort at that time?

[SPO1 Medina]: We exerted effort but there nobody was (sic) available, Sir.^[36]

At this point, it is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible.^[37] However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced.^[38] In *People v. Umipang*,^[39] the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse."^[40] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for noncompliance.^[41] 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 full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. **As such, 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 circumstance, their actions were reasonable.**^[42]

Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression - as in fact the only reason given was that "they exerted effort but nobody was available" - the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Ramos have been compromised. It is settled that in a prosecution for the illegal sale and possession of dangerous drugs under RA 9165, the State carries the heavy burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti*, failing in which, renders the case for the State insufficient to prove the guilt of the accused beyond reasonable doubt.^[43] Moreover, jurisprudence dictates that the procedure in Section 21 of RA 9165, as amended by RA 10640, is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.^[44] Accordingly, since the prosecution failed to provide justifiable grounds for non-compliance therewith, Ramos's acquittal is in order.

As a final note, the Court finds it fitting to echo its recurring pronouncement in recent jurisprudence on the subject matter:

The Court strongly supports the campaign of the government against drug addiction and commends the efforts of our law enforcement officers against those who would inflict this malediction upon our people, especially the susceptible youth. But as demanding as this campaign may be, it cannot be more so than the compulsions of the Bill of Rights for the