

SECOND DIVISION

[G.R. No. 238594, November 05, 2018]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEY REYES Y LAGMAN, ACCUSED-APPELLANT.

DECISION

PERLAS-BERNABE, J.:

Assailed in this ordinary appeal^[1] is the Decision^[2] dated August 25, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07352, which affirmed the Joint Decision^[3] dated March 10, 2015 of the Regional Trial Court of Caloocan City, Branch 127 (RTC) in Criminal Case Nos. C-89170 and C-89171, finding accused-appellant Joey Reyes y Lagman (Reyes) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,^[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations^[5] filed before the RTC accusing Reyes of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The prosecution alleged that in the evening of December 20, 2012, members of the Northern Police District Anti-Illegal Drug Special Operation Task Group successfully conducted a buy-bust operation against Reyes, during which one (1) plastic sachet containing 0.07 gram of white crystalline substance was recovered from him. During the search incidental to Reyes' arrest, eight (8) more plastic sachets containing an aggregate weight of 0.43 gram were discovered in his possession. After marking the seized items at the place of arrest, the buy-bust team, together with Reyes, went to their headquarters where the inventory and photography were witnessed by a media representative. Thereafter, the seized items were brought to the crime laboratory where, after examination,^[6] the contents thereof yielded positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.^[7]

In defense, Reyes denied the charges against him, claiming instead, that he was just loitering outside his house when he saw policemen running after a suspected drug pusher. When said drug pusher was arrested, Reyes was likewise arrested by the policemen and taken to their headquarters where he was forced to admit ownership of the drugs found from the aforesaid drug pusher.^[8]

In a Joint Decision^[9] dated March 10, 2015, the RTC found Reyes guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (a) in Criminal Case No. C-89170, he was sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00; and (b) in Criminal Case No. C-89171, he was sentenced to suffer the penalty of imprisonment for an

indeterminate period of twelve (12) years, and one (1) day, as minimum, to seventeen (17) years and eight (8) months, as maximum, and to pay a fine in the amount of P300,000.00.^[10] The RTC found that through the positive testimonies of the members of the buy-bust team, the prosecution had established that Reyes indeed sold a plastic sachet containing *shabu* to the poseur-buyer, and that after his arrest, more plastic sachets also containing *shabu* were found in his possession. It further found that the buy-bust team substantially complied with the chain of custody rule, thereby preserving the integrity and evidentiary value of the drugs seized from Reyes.^[11] Aggrieved, Reyes appealed^[12] to the CA.

In a Decision^[13] dated August 25, 2016, the CA affirmed *in toto* the RTC ruling.^[14] It held that the prosecution had established all the elements of the crimes charged, and that there was substantial compliance with the chain of custody rule.^[15]

Hence, this appeal seeking that Reyes' conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,^[16] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.^[17] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.^[18]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.^[19] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.^[20] In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."^[21] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.^[22]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,^[23] "a representative from the media **and** the Department of Justice (DOJ), and any elected public official";^[24] or (b) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service **or** the media."^[25] The law requires the presence of these witnesses primarily "to ensure the establishment of

the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."^[26]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."^[27] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."^[28]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.^[29] As such, the failure of the apprehending team to strictly comply with the same would 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 a justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.^[30] The foregoing is based on the saving clause found in Section 21 (a),^[31] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.^[32] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,^[33] and 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]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.^[35] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.^[36] 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 fully well that they would have to strictly comply with the chain of custody rule.^[37]

Notably, the Court, in *People v. Miranda*,^[38] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."^[39]

In this case, it is explicitly stated in the Inventory of Confiscated/Seized Drugs^[40] dated December 20, 2012 that no elected public official and DOJ representative

were available to witness the concurrent conduct of inventory and photography of the items purportedly seized from Reyes. In this regard, it is noticeable from the testimonies of the poseur-buyer, Police Officer 2 John Rey Catinan (PO2 Catinan), and the back-up arresting officer, Police Officer 1 Nephthalie Buensuceso (PO1 Buensuceso), that the absence of the aforesaid required witnesses was not acknowledged by the prosecution, to wit:

Direct Examination of PO2 Catinan

[Assistant City Prosecutor Albert T. Cansino (Pros. Cansino)]: So after the turn-over to the investigator, what happened to this case?

[PO2 Catinan]: Our investigator called for [a] media representative in the person of Ka Maeng Santos in order to conduct inventory with the picture taking, sir.

Q: Do you have proof that there was an inventory and taking of photographs?

A: There was, sir.

Q: I am showing to you Inventory of Confiscated/Seized Drugs previously marked as Exhibit "G" and the photographs previously marked as Exhibit "I" and Exhibit "I-1". What relation has this [sic] documents and photographs to those taken during the investigation?

A: These are the one [sic], sir.

COURT INTERPRETER:

Witness identifying Exhibits "G", "I", and "I-1".

[Pros Cansino]: After the inventory and the taking of the photographs, what happened next?

[PO2 Catinan]: Our investigator requested for [a] crime laboratory examination on the pieces of evidence, sir.^[41]

Direct Examination of PO1 Buensuceso

[Pros. Cansino]: You also said that the investigator called up the presence of witnesses and conducted an inventory, do you have proof that inventory was conducted in this case?

[PO1 Buensuceso]: Yes, sir.

Q: What is that proof Mr. Witness?

A: We accomplished the inventory of the seized drug evidences and we also signed the same document sir during that day, sir.

Q: I'm showing to you inventory of confiscated and seized drugs dated December 20, 2012 previously marked Exhibit "G", what relation has this