

THIRD DIVISION

[G.R. No. 207992, August 11, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO HOLGADO Y DELA CRUZ AND ANTONIO MISAREZ Y
ZARAGA, ACCUSED-APPELLANTS.**

D E C I S I O N

LEONEN, J.:

Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused.

This resolves an appeal from a conviction for illegal sale of dangerous drugs or for violation of Section 5 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellants Roberto Holgado y Dela Cruz (Holgado) and Antonio Misarez y Zaraga (Misarez) were charged in an information dated January 19, 2007, as follows:

On or about January 17, 2007, in Pasig City and within the jurisdiction of this Honorable Court, the accused conspiring and confederating together and both of them mutually helping and aiding with (sic) one another, and not being lawfully authorized to sell any dangerous drug, did then and there wilfully, unlawfully and feloniously sell, deliver and give away to PO1 Philip Aure, one (1) piece of heat-sealed transparent plastic sachet containing five (5) centigrams (0.05 gram) of white crystalline substance, which was found to (sic) positive to the test for methylamphetamine hydrochloride (shabu), a dangerous drug, in violation of the said law.

Contrary to law.^[1]

Holgado and Misarez were also charged with possession of dangerous drugs, and possession of drug paraphernalia, but subsequently acquitted.

As alleged by the prosecution, in December 2006, the Pasig City Police received reports of illegal drug activities of Holgado along C. Raymundo Street, Pasig City.^[2] After surveillance operations, a search warrant was issued against Holgado. Acting on the search warrant, the Pasig City Chief of Police instructed his officers to, if possible, first conduct a buy-bust operation before actually enforcing the search

warrant.^[3]

In the evening of January 17, 2007, police operatives went to No. 17, C. Raymundo Street for the buy-bust operation. PO1 Philip Aure, acting as poseur-buyer and accompanied by the police informant, approached Holgado who was then part of a drinking session with two (2) companions. Holgado asked the informant if he was buying drugs while at the same time offering him a drink. The informant accepted the drink and introduced PO1 Aure as a drug user. PO1 Aure then handed Holgado two (2) marked one hundred peso bills. Holgado asked PO1 Aure and the informant to wait as the drugs were with his "kumpare" who was then in the restroom.^[4]

Holgado called Misarez. After some time, co-accused Antonio Misarez stepped out of the restroom and asked who was buying drugs. PO1 Aure and the informant answered, "Kami." Misarez then handed a plastic sachet containing a white crystalline substance to PO1 Aure. PO1 Aure examined the sachet's contents and took out his cellphone. This was the pre-arranged signal to the other police operatives that the sale of drugs had been consummated.^[5]

The police operatives then approached PO1 Aure. When PO1 Aure saw his companions approaching, he seized Misarez's hand, but the latter was able to escape and lock himself inside the house. Holgado, too, was able to flee into the house and join Misarez. The police operatives managed to break open the wooden door with a crowbar. By then, however, Holgado and Misarez had managed to leave the house through a passageway in the ceiling leading to an adjoining house. PO3 Rolando Abuyme and PO2 Arnulfo Dancel managed to get inside the adjoining house where they apprehended Holgado and Misarez.^[6]

The search warrant was then enforced "in coordination with a barangay official and in the presence of some media people."^[7] The search allegedly yielded several drugs and drug paraphernalia.^[8] These items (i.e., other than the plastic sachet containing a white crystalline substance supposedly sold to PO1 Aure) were the subject of three (3) other cases. These other cases have since been dismissed.^[9]

As noted in the Regional Trial Court's August 17, 2009 decision, PO3 Abuyme prepared an inventory of the seized items.^[10] Specifically with respect to the plastic sachet which was the basis of the charge of illegal sale of dangerous drugs, PO1 Aure supposedly marked the plastic sachet handed to him by Misarez with "RH-PA"^[11] at the site of the buy-bust operation.

Following their arrest, Holgado and Misarez were charged with violating Sections 5 (sale of dangerous drugs),^[12] 11 (possession of dangerous drugs),^[13] and 12 (possession of drug paraphernalia)^[14] of Republic Act No. 9165. The case for violating Section 5 was docketed as Criminal Case No. 15338-D. The cases for violating Section 11 were docketed as Criminal Case Nos. 15339-D and 15341-D. The case for violating Section 12 was docketed as Criminal Case No. 15340-D. The charge for violating Section 5 was in view of the plastic sachet containing a white crystalline substance supposedly sold by Holgado to PO1 Aure. The charges for violations of Sections 11 and 12 were in view of the items supposedly seized in enforcing the search warrant.

During trial, the prosecution presented as witnesses PO1 Aure and the apprehending officers PO2 Roberto Castulo and PO3 Abuyme. The defense presented as its witnesses accused-appellants Holgado and Misarez, as well as their neighbor, Carlos Marquing, and Holgado's wife, Maribel Villareal.^[15]

In their testimonies, accused-appellants claimed that no buy-bust operation was conducted. Instead, the police operatives allegedly barged into Holgado's house and arrested accused-appellants who were then merely having a few drinks. While Holgado and Misarez were handcuffed, the police operatives conducted a supposed search of Holgado's house. They were then taken to the police station. Defense witnesses Marquing and Villareal corroborated accused-appellants' claims.^[16]

After trial, the Pasig City Regional Trial Court, Branch 154 found Holgado and Misarez guilty of illegal sale of dangerous drugs (*i.e.*, violating Section 5 of Republic Act No. 9165). They were acquitted of the charges pertaining to Section 11 of Republic Act No. 9165 as the drugs supposedly seized were not introduced in evidence. Holgado, the sole accused in Criminal Case No. 15340-D, was also acquitted of the charges relating to Section 12 of Republic Act No. 9165 as the paraphernalia to which PO2 Castulo testified to in court were different from those indicated in the inventory supposedly made when the search warrant was enforced.^[17]

Holgado and Misarez were sentenced to suffer the penalty of life imprisonment and to pay a penalty of P1 million. The dispositive portion of the Regional Trial Court's decision reads:

WHEREFORE, premises considered, judgment is hereby rendered –

In Crim. Case No. 15338-D finding both the accused Roberto Holgado and Antonio Misarez GUILTY beyond reasonable doubt of the crime of violation of Section 5 of R.A. 9165 (sale of dangerous drug), and each of them is hereby sentenced to suffer the penalty of life imprisonment. Each of them is also ordered to pay a fine of One Million Pesos (P1,000,000.00).

In Crim. Cases Nos. 15339-D and 15341-D for violation of Section 11 of R.A. 9165 (possession of dangerous drug) against accused Roberto Holgado and Antonio Misarez, they are hereby found NOT GUILTY of the said offense for lack of evidence.

In Crim. Case No. 15340-D for violation of Section 12 of R.A. 9165 (possession of drug paraphernalia) against Roberto Holgado, judgment is hereby rendered finding the said accused NOT GUILTY of the said offense charged against him on the ground of reasonable doubt.

The dangerous drugs and drug paraphernalia allegedly obtained from the persons of the accused and subject of the Informations are hereby ordered delivered forthwith to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

Considering the penalty imposed by the Court on the accused ROBERTO

HOLGADO and ANTONIO MISAREZ for violation of Section 5 of R.A. 9165 (sale of dangerous drug), their immediate commitment to the National Bilibid Prisons is hereby ordered.

SO ORDERED.^[18] (Underscoring in the original)

In the decision dated February 18, 2013,^[19] the Court of Appeals affirmed the Regional Trial Court's decision convicting Holgado and Misarez.

On March 4, 2013, Holgado and Misarez filed their notice of appeal.^[20]

In the resolution dated September 11, 2013, this court noted the records forwarded by the Court of Appeals and informed the parties that they may file their supplemental briefs.^[21]

On November 6, 2013, the Office of the Solicitor General filed a manifestation and motion, on behalf of the People of the Philippines, noting that it would no longer file a supplemental brief.^[22]

On December 27, 2013, Holgado and Misarez filed their joint supplemental brief^[23] where they assailed the supposed lack of compliance with the requirements set by the chain of custody of seized drugs and drug paraphernalia as provided by Section 21 of Republic Act No. 9165.

For resolution is the issue of whether Holgado's and Misarez's guilt beyond reasonable doubt for violating Section 5 of Republic Act No. 9165 was established. Subsumed in the resolution of this issue is the question of whether the prosecution was able to establish compliance with the requisites of Section 21 of Republic Act No. 9165.

The elements that must be established to sustain convictions for illegal sale of dangerous drugs are settled. In *People v. Morales*,^[24] this court stated:

In actions involving the illegal sale of dangerous drugs, the following elements must first be established: (1) proof that the transaction or sale took place and (2) the presentation in court of the corpus delicti or the illicit drug as evidence.^[25]

On corpus delicti, Section 21 of Republic Act No. 9165, as amended by Republic Act No. 10640, provides for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Specifically with respect to custody before the filing of a criminal case, Section 21, as amended, provides:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA

shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (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.*
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.] (Emphasis supplied)

As this court declared in *People v. Morales*, “failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the corpus delicti.”^[26] It “produce[s] doubts as to the origins of the [seized paraphernalia].”^[27]

The significance of ensuring the integrity of drugs and drug paraphernalia in