



Republic of the Philippines
 Supreme Court
 Baguio City

SECOND DIVISION

PEOPLE OF THE PHILIPPINES,
 Plaintiff-Appellee,

G.R. No. 229047

Present:

- versus

CARPIO,* J., Chairperson,
 PERALTA,
 PERLAS-BERNABE,
 CAGUIOA, and
 REYES, JR., JJ.

RAMONCITO CORNEL y
 ASUNCION,
 Accused-Appellant.

Promulgated:

16 APR 2018

x-----*[Signature]*-----x

DECISION

PERALTA, J.:

This is an appeal of the Court of Appeals' (CA) Decision¹ dated June 9, 2016 dismissing appellant's appeal and affirming the Decision² dated October 29, 2014 of the Regional Trial Court (RTC), Branch 64, Makati City convicting appellant of Violation of Section 5, Article II, Republic Act (R.A.) No. 9165.

The facts follow.

On December 15, 2013, PO1 Mark Anthony Angulo reported for work and a buy-bust operation was conducted against appellant Ramoncito Cornel.

* Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.
¹ Penned by Associate Justice Franchito N. Diamante, with the concurrence of Associate Justices Japar B. Dimaampao and Carmelita Salandanan Manahan.
² Penned by Judge Gina M. Bibat-Palamos.

[Signature]

In preparation for the buy-bust operation, coordination was made with the District Anti-Illegal Drugs (*DAID*) and Philippine Drug Enforcement Agency (*PDEA*). Control No. PDEA-RO-NCR 12/13-00175 was issued by the PDEA as proof that they received the coordination form dated December 15, 2013. Led by PCI Gaylord Tamayo, a pre-operation plan was made where PO1 Angulo was designated a poseur-buyer. A one thousand peso bill was provided and marked for use in the operation. A petty cash voucher was prepared in relation to his receipt of the money from PCI Tamayo. The team then proceeded to the reported place of operation at *Barangay* East Rembo, Makati City and arrived therein at around 7:30 in the evening. A final briefing was conducted by PCI Tamayo. After the final briefing, PO1 Angulo proceeded on foot to 23rd Street together with the regular informant. Before they could reach their destination, they saw the subject appellant at a store. The informant introduced him to the subject as a "*tropa*." In the course of their conversation, he asked appellant "*kung meron ba*" to which appellant replied, "*meron namán*." PO1 Angulo then asked appellant if he could see the item, but the latter asked for the payment first. Appellant took the buy-bust money and placed it in his pocket. Appellant then brought out the item from the same pocket and handed it over to PO1 Angulo. The transaction having been consummated, PO1 Angulo gave the pre-arranged signal, by means of removing his cap, to the rest of the team. SPO1 Randy Obedoza arrived after PO1 Angulo grabbed appellant and introduced himself as a police officer. They then placed appellant under arrest. Initial body search was made where they were able to recover the marked money used in buying the item. SPO1 Obedoza informed the appellant of his constitutional rights. The inventory was conducted at the *barangay* hall. After the inventory, PO1 Angulo turned the seized items over to the duty investigator, PO2 Michelle Gimena, so that the necessary referrals could be made. A Request for Laboratory Examination was prepared and the seized items were submitted to the Scene of the Crime Operatives (SOCO) for examination. Photographs of the inventory and the marking were also taken at the *barangay* hall.³

Thus, an Information was filed against the appellant for violation of Section 5, Article II of R.A. No. 9165 that reads as follows:

On the 15th day of December 2013, in the City of Makati, the Philippines, accused, without the necessary license or prescription and without being authorized by law, did then and there wilfully, unlawfully and feloniously sell, deliver, and give away Methamphetamine Hydrochloride weighing zero point zero three (0.03) gram, a dangerous drug, in consideration of Php1,000.00.

CONTRARY TO LAW.⁴



³ See *Rollo*, pp. 3-4.

⁴ *Rollo*, p. 3.

Appellant used denial as a defense. According to him, he was on his way home when he was accosted by two men who introduced themselves as police officers.

The RTC of the City of Makati, Branch 64 found appellant guilty beyond reasonable doubt of the crime charged and sentenced him, thus:

WHEREFORE, in view of the foregoing, judgement (sic) is hereby rendered finding the accused RAMONCITO CORNEL y ASUNCION, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing him to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.⁵

The RTC ruled that all the elements for violation of Section 5, Article II of R.A. No. 9165 have been proved beyond reasonable doubt by the prosecution. It also held that the integrity and the evidentiary value of the seized items were properly preserved by the buy-bust team under the chain of custody rule. It further ruled that the defense of denial by the appellant cannot surmount the positive and affirmative testimony offered by the prosecution.

The CA affirmed the decision of the RTC *in toto*. It ruled that the illegal sale of *shabu* has been established beyond reasonable doubt. It was also ruled that appellant was validly arrested during a legitimate buy-bust operation. It also ruled that the defense of denial should be looked with disfavor for they are easily concocted but difficult to prove, especially the claim that one has been the victim of a frame-up. The appellate court also ruled that the integrity and evidentiary value of the *shabu* taken from appellant were clearly established by the prosecution.

Hence, the present appeal with the following assignment of errors:

I

THE COURT *A QUO* GRAVELY ERRED IN GIVING WEIGHT TO THE TESTIMONY OF PO1 ANGULO DESPITE ITS IRREGULARITIES, THUS, CASTING DOUBT UNTO HIS CREDIBILITY AND THE VERACITY OF DECLARATIONS.

II

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT THE

⁵ *Id.* at 5.



ACCUSED-APPELLANT'S WARRANTLESS ARREST WAS ILLEGAL.

III

THE COURT *A QUO* GRAVELY ERRED IN NOT RENDERING INADMISSIBLE THE ALLEGEDLY CONFISCATED SHABU FOR BEING A FRUIT OF THE POISONOUS TREE.

IV

THE COURT *A QUO* GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE FAILURE OF THE OPERATIVES TO MARK THE ALLEGEDLY CONFISCATED PLASTIC SACHET IMMEDIATELY AFTER IT WAS SEIZED.

V

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE IRREGULARITIES IN THE CONDUCT OF THE INVENTORY OF THE CONFISCATED ITEM.

VI

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.

According to appellant, his guilt was not proven beyond reasonable doubt as the testimony of the witness had full of irregularities. He also claims that his warrantless arrest was illegal. He also questions the irregularities committed in the conduct of the inventory of the confiscated item. He also insists that there was a broken chain of custody of the confiscated dangerous drug.

The appeal is meritorious.

Under Article II, Section 5 of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

(1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.⁶

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."⁷

⁶ *People v. Ismael y Raclang*, G.R. No. 208093, February 20, 2017.

⁷ *Id.*

In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.⁸ In *People v. Gatlabayan*,⁹ the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.¹⁰ Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."¹¹

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

⁸*Id.*⁹

699 Phil. 240, 252 (2011).

¹⁰*People v. Mirondo*, 771 Phil. 345, 357 (2015).¹¹See *People v. Ismael y Radang*, G.R. No. 208093, February 20, 2017.

On July 15, 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."¹² 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."¹³ In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."¹⁴

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."¹⁵ In his Co-sponsorship Speech, he noted:

¹² Senate Journal. Session No. 80. 16th Congress, 1st Regular Session, June 4, 2014. p. 348.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 349.



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 probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.¹⁶

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, We opined in *People v. Miranda*:¹⁷

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. 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

¹⁶ *Id.* at 349-350.

¹⁷ G.R. No. 229671, January 31, 2018.



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. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the 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. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, 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.¹⁸

Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media and (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee “against planting of evidence and frame up,” *i.e.*, they are “necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.”¹⁹ Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before the amendment.

According to the CA, there was no break or gap in the chain of custody, hence, the prosecution was able to establish with moral certainty that the specimen submitted to the crime laboratory and found positive for dangerous drugs, and finally introduced as evidence against appellant was the same

¹⁸ See also *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; *People v. Jugo*, G.R. No. 231792, January 29, 2018; *People v. Calibod*, G.R. No. 230230, November 20, 2017; *People v. Ching*, G.R. No. 223556, October 9, 2017; *People v. Geronimo*, G.R. No. 225500, September 11, 2017; *People v. Ceralde*, G.R. No. 228894, August 7, 2017; and *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

¹⁹ *People v. Sagana*, G.R. No. 208471, August 2, 2017.



dangerous drug that was confiscated from him, thus:

In the case at bench, We find that the integrity and evidentiary value of the *shabu* taken from appellant were clearly established by the prosecution. There was no showing that PO1 Angulo lost possession of the said illegal drug from the time it was taken from the appellant until its turn over to the investigator at the police station. The sachet of *shabu* was immediately marked upon the arrival of the buy-bust team at the Barangay Hall of East Rembo, Makati in the presence of: (1) SPO1 Randy L. Obedoza who served as PO1 Angulo's back-up during the operation; (2) appellant; and (3) four *barangay tanods*. An inventory was conducted and a Chain of Custody and Inventory Receipt were then prepared on the same night. Thereafter, the evidence was turned over by PO1 Angulo to the investigator, PO2 Michelle V. Gimena (PO2 Gimena). After the pertinent papers were drawn-up by 10:15 P.M., the illegal drug was returned by PO2 Gimena to PO1 Angulo. PO1 Angulo was the one who turned over the confiscated item to PSI Rendielyn L. Sahagun (PSI Sahagun), the Forensic Chemist for laboratory examination. To safeguard the integrity of their office, PSI Sahagun marked the plastic sachet containing the confiscated item with D-941-13A RLS. The original copy of Chemistry Report No. D-941-13 and the evidence submitted was retained by the Southern Police District Crime Laboratory until presentation before the trial.²⁰

This Court rules otherwise. In this case, PO1 Angulo testified that the inventory was not conducted at the place of the arrest but at the *Barangay Hall* of East Rembo, thus:

PROS. BARREDO-GO

After reading to the accused the Miranda rights, what happened next?

WITNESS

We were supposed to make an inventory at the place, but since there were many persons already at the place that time, so we decided to proceed to the barangay hall to conduct the inventory, ma'am.²¹

The CA also ruled that the prosecution was able to sufficiently explain why the item seized was not immediately marked, thus:

Here, it has been explained by the prosecution that the reason why the item seized from appellant was not immediately marked at the target place was because a commotion ensued after appellant's arrest. For security purposes and to prevent any damage, the arresting team decided to make the markings at the Barangay Hall of East Rembo, Makati.²²

²⁰ *Rollo*, pp. 14-15. (Citations omitted)

²¹ TSN, February 25, 2014, p. 15.

²² *Rollo*, p. 15.



This Court, however, finds the said explanation as insufficient and unjustifiable considering that the team who arrested the appellant was composed of eight (8) police officers, and only one of them was unarmed. Such number of armed police operatives could have easily contained a commotion and proceed with the immediate inventory of the seized item so as to comply with the law. As testified by PO1 Angulo:

ATTY. PUZON:

How many immediate back up assisted you?

WITNESS:

SPO1 Obedoza was the first to arrive, ma'am.

ATTY. PUZON:

Since they were back up operatives, Mr. Witness, they are armed?

WITNESS:

Yes, ma'am.

ATTY. PUZON

All of them, Mr. Witness?

WITNESS

Yes, ma'am.

ATTY. PUZON

How about you, were you armed at that time?

WITNESS

No, ma'am.

ATTY. PUZON

But the rest of your companions, the rest of the team were armed at that time?

WITNESS

Yes, ma'am.

ATTY. PUZON

How many were they, Mr. Witness?

WITNESS

Seven, ma'am.

ATTY. PUZON

Where did the marking take place, Mr. Witness?

WITNESS

At the barangay hall of East Rembo, ma'am.

ATTY. PUZON

Why in the barangay hall and not in the place of operation?

WITNESS

For security purposes, ma'am.

ATTY. PUZON

When you say security purposes, what do you mean by that, Mr. Witness?

WITNESS

Because when we were able to arrest Pukol, there was a commotion, ma'am.

ATTY. PUZON

Did you report the commotion or the incident that happened?

WITNESS

I cannot recall if we had reported that, ma'am.

ATTY. PUZON

And, despite the fact that your back up operatives were armed, most of them were armed, and according to you they were seven, they cannot constrain these people causing commotion?

WITNESS

We just prevented damage to occur in the area, ma'am.²³

Absent therefore any justifiable reason, the apprehending team should have immediately conducted the inventory upon seizure and confiscation of the item.

Furthermore, no explanation nor a valid reason was also given for the absence of a representative from the media and the Department of Justice during the inventory of the item seized.

The identity of the seized item, not having been established beyond reasonable doubt, this Court, therefore, finds it apt to acquit the appellant.

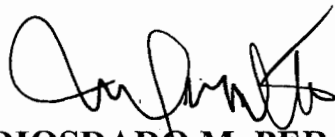
WHEREFORE, premises considered, the Decision dated June 9, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07533, which affirmed the Decision dated October 29, 2014 of the Regional Trial Court, Branch 64, Makati City, is **REVERSED AND SET ASIDE**. Appellant Ramoncito Cornel y Asuncion is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is **ORDERED IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let an entry of final judgment be issued immediately.

²³

TSN, February 25, 2014, pp. 40- 42.

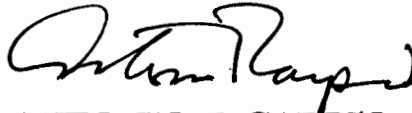
Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, New Bilibid Prison, Muntinlupa City, for immediate implementation. Said Director is **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Decision the action he has taken.

SO ORDERED.




DIOSDADO M. PERALTA
Associate Justice

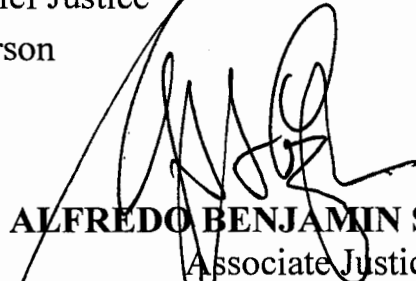
WE CONCUR:



ANTONIO T. CARPIO
Acting Chief Justice
Chairperson



ESTELA M. PERLAS-BERNABE
Associate Justice



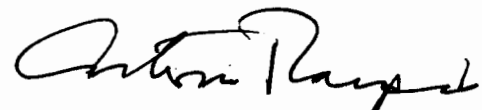
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Acting Chief Justice